

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION, CINCINNATI**

**EVERETT W. WHISMAN, et al.**

Plaintiffs,

-VS-

**ZF BATAVIA, LLC, et al.**

Defendants.

:

**Case No. C01-02-406**

:

**Judge Beckwith**

:

**Magistrate Sherman**

:

**NOTICE OF FILING OF  
DEPOSITION OF LEN SENNISH**

:

**NOW COMES** Defendant ZF Batavia, LLC, by and through counsel and hereby gives notice of the filing of the deposition of Len Sennish. Attached hereto is a true and accurate copy of the deposition of Len Sennish.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent to the individual(s) listed below by facsimile and First Class U.S. Mail, postage prepaid, on this 21<sup>st</sup> day of November, 2003.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION, CINCINNATI

EVERETT W. WHISMAN, et al., :  
Plaintiffs :  
-v- : Case No. C-1-02-406  
: (Judge Beckwith)  
: (Magistrate Sherman)  
ZF BATAVIA, LLC, et al., :  
Defendants :

- 0 -

The deposition of LEONARD SENNISH, taken before Melea E. Chaney, Court Reporter and Notary Public in and for the State of Ohio, at the Holiday Inn Eastgate, 4501 Eastgate Boulevard, Cincinnati, Ohio, on the 25th day of July, 2003, beginning at the hour of 7:57 a.m. and ending at 12:12 p.m. of the same date.

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ALSO PRESENT:           MR. GARY VORIES  
MR. E. WAYNE WHISMAN  
MR. HERBERT HUEBNER

- 0 -

STIPULATIONS:

It is stipulated by and between counsel for the respective parties that the deposition of LEONARD SENNISH, a witness herein, may be taken at this time pursuant to the Federal Rules of Civil Procedure and Notice; that the deposition may be taken via Stenomask by the Notary Public/Court Reporter, and transcribed by her out of the presence of witness; that the deposition was submitted to counsel for the witness for reading and signature.

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1 LEONARD SENNISH, called as a witness, being first duly  
2 sworn, testified as follows:  
3 Q Sir, can you please state your full  
4 name for the record?

5                   A           It's Leonard Walter Sennish,  
6           S-E-N-N-I-S-H.

7                   MR. SIMON: All right. Mr. Sennish, my  
8           name is Steve Simon. I'm one of the attorneys  
9           for the plaintiffs in this lawsuit that was  
10          brought against ZF Batavia and Ford Motor  
11          Company. Two of my clients are here today,  
12          Wayne Whisman and Gary Vories, but I think  
13          you're aware there's a total of 15 salaried  
14          employees that are in the lawsuit. Were you  
15          aware of that?

16                  THE WITNESS: That's correct. Yes, I  
17          was.

18          BY MR. SIMON:

19                  Q           Have you ever had your deposition  
20          taken, Mr. Sennish?

21                  A           Yes, I have.

22                  Q           More than once?

23                  A           More than once.

24                  Q           When was the most recent?

25                  A           About two or three weeks ago.

5

1                  Q           Was that in the Gene Gilliam case?

2                  A           That's correct.

3                  Q           What other times before that?

4 A Approximately a year ago, Tony Clay.

5 And then it was probably five years prior to that, a

6 case with another company. I can't remember the

7 individual's name.

8 Q Who is Tony Clay?

9 A Tony Clay was a former employee of ZF

10 Batavia, a salaried group leader.

11 Q What was the nature of his lawsuit?

12 A I believe it just centered on wrongful

13 termination and threw in, I believe, based on his race.

14 Q Is it still pending?

15 A No, that has been resolved.

16 Q Was it filed here in southern Ohio?

17 A Yes.

18 Q Was it in federal court, do you know?

19 A I'm not sure. I believe it was.

20 Q So obviously in the Tony Clay case you  
21 testified in your capacity as human resources director?

22 A That's correct.

23 Q Is that your title?

24 A That's correct.

25 Q And five years ago you testified again

6

1 on behalf of another company in your capacity as a

2 human resource manager of some kind?

3 A At that time I was director of labor

4 relations.

5 Q What was the company?

6 A American Axle and Manufacturing.

7 MR. SIMON: All right. Well, you've  
8 done this a few times so you probably know the  
9 ground rules, but I'll go ahead and tell you  
10 them again. You've heard it two or three weeks  
11 ago, but the ground rules of a deposition just  
12 are that I'm going to ask you questions and  
13 you're going to answer them under oath. The  
14 court reporter is going to take down your  
15 answers. Answer audibly where you can with a  
16 yes or no so she can take down what you said as  
17 opposed to making some sort of noise. That's  
18 hard to figure out what that is.

19 The most important thing is, though, if  
20 I ask a question and you don't understand it,  
21 Mr. Sennish, or you just didn't hear it, please  
22 ask me to rephrase or re-ask. Otherwise  
23 someone reviewing the transcript is going to  
24 think that you understood my question. Will  
25 you ask me to re-ask or rephrase if you don't

7

1 understand a question?

2 THE WITNESS: Yes, I will.



3 MR. SIMON: You'll do that?

4 THE WITNESS: I absolutely will.

5 MR. SIMON: All right. And understand,  
6 too, sir, that if you become tired or have  
7 trouble concentrating, you can take a break if  
8 you like. We'll probably be here in the  
9 morning, but we'll break at a good time, so  
10 whenever you need a break, just tell your  
11 lawyer.

12 THE WITNESS: Great.

13 BY MR. SIMON:

14 Q You sort of hinted at where -- I wanted  
15 to ask you about your former background before you  
16 started at ZF Batavia. Did you start at ZF Batavia in  
17 1999 or 2000?

18 A September of 1999.

19 Q Where did you work before that?

20 A American Axle and Manufacturing in  
21 Detroit.

22 Q And how long were you there?

23 A Exactly five years.

24 Q Started in '94 roughly?

25 A Correct. September of '94.

8

1 Q Before that?

2 A I worked with Philip Morris USA in

3 Charlotte, North Carolina.

4 Q And how long were you there?

5 A Eighteen months.

6 Q Say, 1992 to 1994, I guess?

7 A Yes, more or less.

8 Q What was your position at Philip

9 Morris?

10 A Human resources manager.

11 Q When you were at American Axle, were  
12 you director of labor relations that whole time?

13 A No. That would have been the last  
14 three years. The previous two years was site personnel  
15 director at the Detroit complex.

16 Q At Philip Morris you were HR manager  
17 for the 18 months?

18 A Yes.

19 Q Before that?

20 A General Motors.

21 Q How long were you there and what were  
22 your jobs?

23 A I was there 12 years. Lastly labor  
24 relations manager at the Saginaw, Michigan site.

25 Q What was your position when you

1 started?

2 A Labor relations administrator.

3 MR. VANWAY: Gentlemen, could I ask  
4 both of you to keep your voices up?

5 MR. SIMON: Yes. Sure thing.

6 THE WITNESS: I'm -- I'm sorry. Did --  
7 was that the -- at the Saginaw site or at  
8 General Motors?

9 MR. SIMON: You said you were at  
10 General Motors for 12 years, and I don't need  
11 to know everything you did there, I just  
12 wondered what you started at General Motors.

13 THE WITNESS: At General Motors as a  
14 first line supervisor.

15 BY MR. SIMON:

16 Q Okay. So you worked your way up into  
17 HR?

18 A Yeah, you can put it that way.

19 Q Well, was it a voluntarily choice to go  
20 into human resources?

21 A Quite frankly, I was recruited into HR.

22 Q What kind of educational background do  
23 you have?

24 A A BS/BA from Ohio State.

25 Q What year?

10

1 A 1976.

2 Q Now, what's in between Ohio State and  
3 GM?

4 A About a week.

5 Q Let's see. Twelve years. According to  
6 my math, I've got you starting at GM in 1980; is that  
7 not right? It must be '76.

8 A Yeah. I'm sorry. Did I --

9 Q You said you were at GM for about 12  
10 years and I thought you started at Philip Morris in  
11 '92.

12 A Yeah. I guess my math was wrong. I --  
13 '76 is when I started.

14 Q All right. What kind of training have  
15 you received over the years in human resources?

16 A Well, without chronicling every one, I  
17 can't think of much I haven't had in terms of seminars  
18 and workshops and certifications from certified quality  
19 instructor from Crosby Quality College to affirmative  
20 action planning certification to labor relations  
21 workshops at Harvard, Michigan State and just a lot of  
22 -- a lot of workshops, seminars and training.

23 Q Do you have documentation of that  
24 training in your personnel file at ZF Batavia?

25 A No.

1 Q Do you have documentation of any  
2 training in your personnel file?

3 A Not at ZF Batavia. It just wasn't  
4 relevant when I was hired.

5 Q Did you leave voluntarily from Philip  
6 Morris?

7 A Yes. I got a job offer with American  
8 Axle I couldn't refuse.

9 Q Did you leave voluntarily from American  
10 Axle to go to ZF Batavia?

11 A I was recruited to work at ZF Batavia  
12 and accepted their offer.

13 Q Have you been fired at any of your  
14 positions in HR, whether it's GM, Philip Morris or  
15 American Axle?

16 A Absolutely not.

17 Q Are there certain plants that you used  
18 to work at where you've been told that you're not  
19 welcome there anymore?

20 A Never.

21 Q Did you develop any relationships with  
22 a labor union such that they've told management at  
23 these former jobs that they don't want you there  
24 anymore?

25 A Well, the only way you move from one

1 company to another in a job where you're in labor  
2 relations or in human resources where you have a  
3 responsibility for labor relations -- the international  
4 union keeps book that I'm aware of on labor relations  
5 managers, directors and whatnot. And so when a company  
6 typically hires somebody at higher level, they will --  
7 they will talk to the international union, their  
8 contacts there and say "Hey, what do you know about  
9 this guy?" And they will get feedback which will  
10 undoubtedly enter into their decision relative to  
11 hiring that person.

12 Q Well, who hired you at ZF Batavia?

13 A My current boss, Dave Adams, was the  
14 primary mover. I also interviewed with Ford Motor  
15 Company as a 49 percent partner in the joint venture  
16 with a gentleman by the name of Dennis Cirbes and a  
17 retired gentleman by the name of Jim Quinlan, retired  
18 now.

19 Q What was it about the job at ZF Batavia  
20 that was attractive to you?

21 A Well, I always liked being close to the  
22 plants and the three years -- the last three years at  
23 American Axle was a corporate job which was a fine job,  
24 I just got this contact from a -- a executive recruiter  
25 out of Chicago who talked to me about the position.

1 And what, number one, attracted me to it was the  
2 combination of a corporate job and a plant job in one  
3 job. And that -- that was very enticing in terms of  
4 the variety of activities. And, secondly, I had lived  
5 in Michigan two different times and I didn't want to  
6 live in Detroit anymore and Cincinnati was an  
7 acceptable alternative, secondarily.

8 Q So when I had asked you about if you  
9 were not allowed in certain plants, are you saying  
10 that's not true or it is true?

11 A I have never been barred from any  
12 factory that I'm aware of.

13 Q But it is your testimony that you think  
14 the people who hired you at ZF Batavia may have talked  
15 to the international union to see what your previous  
16 experience was or are you saying the union, the UAW,  
17 talked to the international --

18 A Well, I know the -- I know the UAW did  
19 because that feedback came back to me and I'm pretty  
20 sure that my boss went through the Ford channels to  
21 find out and I bet Ford did to make sure when they  
22 interviewed me that there wasn't going to be a problem  
23 in Batavia.

24 Q Well, was it your understanding the UAW  
25 reported negative things about you at the former jobs?

1           A           Not at all. I doubt whether I would  
2           have gotten hired if they had a negative opinion.

3           Q           All right. I mean, you're the type of  
4           HR manager that takes a pretty aggressive posture  
5           towards the unions?

6           A           Well, I mean, cautiously aggressive.  
7           There's --

8           Q           When you came in September '99, what  
9           were you told about the transition in terms of the  
10          salaried workforce?

11          A           Well, when I came to ZF in September of  
12          '99, the -- the Ford HR manager was still there and so  
13          when I --

14          Q           Who was?

15          A           Mike Warden, who's now in Chicago at  
16          the assembly plant. When I came in physically, Mike  
17          and I pretty much divided -- put a clear line of  
18          demarcation in our responsibilities in that Mike would  
19          continue working in an ancillary office handling the  
20          Ford business and that I would be taking over the ZF  
21          business and the plant activities, et cetera, et  
22          cetera. So Mike was there until February of 2000, give  
23          or take a week, where he pretty much oversaw the -- the  
24          transition through that time.

25          Q           Let's go right to the documents. The



1 documents I have in front of you, Mr. Sennish, are  
2 documents we've referred to in previous depositions, so  
3 if you'll just keep that stack there and at times I'll  
4 tell you to grab off the stack. So if you could grab  
5 Exhibit 2 off the stack and place that in front of you.

6 Exhibit 2, we've kind of called it a  
7 lot of things. I'll try to be consistent today. We've  
8 called it a brochure, a summary. It's a copy of a tri-  
9 fold brochure. Have you seen Exhibit 2 before?

10 A Yes, I have.

11 Q I don't need you to identify the exact  
12 date, but when did you first see Exhibit 2?

13 A During September of '99.

14 Q Kind of explain for me the context that  
15 you first saw this summary.

16 A Well, having come from an outside  
17 company, I read everything kind of voraciously and this  
18 was one of the -- the items that I was presented with  
19 as a document that was relevant to the joint venture  
20 and read through it and at that time I understood it  
21 pretty clearly.

22 Q Well, what did you understand the  
23 significance of this document to be?

24 A That this was like any other benefit  
25 summary. Like the one I got when I left American Axle

1 to join ZF, it summarized what the -- the benefits  
2 were, it summarized what the policies were and touched  
3 on some procedures and it gave me a pretty good idea of  
4 -- so I could compare what I was leaving at American  
5 Axle and inheriting at ZF, that it was, you know, the  
6 -- the general operating policies, procedures, benefits  
7 of the company.

8 Q But you didn't receive Exhibit 2, you  
9 received some other summary; is that what you said?

10 A Yes.

11 Q Was it your understanding that Exhibit  
12 2 is a summary that applies to Ford transitionals?

13 A That was my understanding.

14 Q Since you've been at ZF Batavia, have  
15 you had occasion to look back at the benefit summary  
16 you were given when you were first hired?

17 A From time to time, yeah.

18 Q Why do you look at it?

19 A Usually for reference because while  
20 I've think I got a pretty good memory, sometimes some  
21 details get lost.

22 Q I mean, in terms if you want to make  
23 sure that the benefits that they told you about in the  
24 beginning, that you're still getting them these years  
25 later; is that --

1 A No.

2 Q I don't understand. Why do you look at  
3 it?

4 A Because I just want to stay fresh with  
5 what the benefits are. I have people asking me  
6 questions about benefits and I like to be able to  
7 answer them.

8 Q So you're not doing it for your own  
9 purposes. You're doing it for other people who also  
10 may have been shown that benefit summary?

11 A Yeah.

12 Q Like it's 2003, so if they ask you  
13 about their benefits, you might go back and look at the  
14 benefit summary you received in '99 just to refresh  
15 your memory?

16 A Yeah, I've done that. And it's the  
17 same benefit summary pretty much since then, so, yeah I  
18 refer to it once in a while.

19 Q If a Ford transitional employee has a  
20 question about their summary package, do you then refer  
21 to Exhibit 2 --

22 A I would.

23 Q -- to refresh your recollection?

24 A I would. And I can't recall the last  
25 time I got an inquiry about that personally.

1                   Q           You can't remember any inquiries about  
2     it?

3                   A           I can't say that. I'm sure in '99 and  
4     early 2000 there were questions. There -- well, I can  
5     say with respect to -- to transferring 401(k) assets  
6     from the Ford Fidelity funds into the ZF Batavia  
7     Fidelity funds there was -- there were some  
8     transmission problems of the data and got a lot of  
9     questions on that for a couple of days in '99, but that  
10    cleared itself up and didn't hear much about that  
11    subsequent to it.

12                  Q           Just turning to one particular thing in  
13    the brochure. And you're familiar with it? Do you  
14    need a second to review it or are you familiar with the  
15    contents?

16                  A           Well, I haven't looked at it in quite  
17    some time, but if there's something in particular I --

18                  Q           Sure. Did you review any documents in  
19    preparation for the deposition, Mr. Sennish?

20                  A           No. I can't say that I did any special  
21    preparation or I sat down and read this over, no, I  
22    didn't.

23                  Q           Did you review any documents?

24                  A           Not in particular, no.

25                  Q           Or just any documents that as you're

1 sitting here you know you looked at it in preparing for  
2 the deposition?

3 A Well, when we were -- the documents  
4 were discovered, I went through my files and looked at  
5 stuff then and looked -- read over what it was and  
6 turned in what was required to be turned over, but --

7 Q In preparation --

8 A -- did I sit down and study this? No.

9 Q But in preparation for today's  
10 deposition did you look over some documents to refresh  
11 your recollection?

12 A Yeah, I looked at a couple of e-mails  
13 and I talked with my attorney last night, but that was  
14 about it.

15 Q Well, I don't want any e-mails between  
16 you and your attorney, but are there other e-mails you  
17 looked at?

18 A I don't know.

19 MR. HUNTER: If you remember. I can't  
20 help you with it.

21 THE WITNESS: There was a reference to  
22 -- to one that was sent to me from the  
23 controller that, you know, had some reference  
24 to -- I don't know, what was it, the Ford  
25 transition pukes or something like that, that

1                   was just such an anomaly that that was  
2                   referenced. And I think that's about it.

3       BY MR. SIMON:

4                   Q           Do you see where it has vacation on the  
5       second page? Second column, lower middle.

6                   A           Yes.

7                   Q           And it lists how many weeks the  
8       employees are entitled to based on their years of  
9       service; is that right?

10                  A           Yes, it does.

11                  Q           Now, if someone is hired -- just to use  
12       the right terminology, when I say Ford transitional  
13       employees, you know who I'm talking about, right?

14                  A           That's true.

15                  Q           And I guess there are people who are  
16       from the parent company, ZF, there are ZF employees who  
17       work in the facility, right?

18                  A           There are some, yes.

19                  Q           And then there are some who, we'll call  
20       them ZF Batavia new hires, they've never worked for  
21       Ford, they never worked for the parent company, they've  
22       just worked for ZF Batavia; there are such salaried  
23       individuals like that in the plant, right?

24                  A           There's quite a few.

25 Q So maybe we'll call them ZF Batavia new

21

1 hires. Is that fair?

2 A That's what we call them.

3 Q All right. So ZF Batavia new hires  
4 don't necessarily have the same benefit when it comes  
5 to vacation; is that right, as compared to what's  
6 listed on Exhibit 2?

7 A Well, what's listed on Exhibit 2 is  
8 fairly consistent with what ZF Batavia salaried new  
9 hires have in terms of the maximum number of vacation  
10 weeks.

11 Q But a ZF Batavia new hire is, depending  
12 on their qualifications, in the position to possibly  
13 negotiate a more favorable package for himself or  
14 herself; is that right?

15 A More favorable than the four weeks?

16 Q Yes.

17 A No.

18 Q There's no ZF Batavia new hires who  
19 have better than four weeks?

20 A Not that I know of and I can't imagine  
21 that there is.

22 Q Are there any that are able to come in  
23 from the get-go and they don't have 15 years with the  
24 company, obviously, but they come in and they can get

25 something close to three or four weeks?

22

1 A Yeah, that's fairly typical in making  
2 job offers to experienced people.

3 Q So when we're talking about ZF Batavia  
4 new hires, we don't look at the vacation benefit  
5 schedule that's on Exhibit 2, right?

6 A No, we don't. It wouldn't apply to  
7 them.

8 Q But the vacation schedule on Exhibit 2,  
9 that's the benefit summary, the benefit summary does  
10 apply currently to Ford transitional employees, right?

11 A Yes.

12 Q Okay. Going back to 1999, you looked  
13 over some documents, you said, to try to catch up, get  
14 yourself up to speed with the new company. You looked  
15 at Exhibit 2. Did you have any conversation with Mike  
16 Warden or anybody else about the circumstances of how  
17 Exhibit 2 was created or if it was distributed to the  
18 employees, that sort of thing?

19 A Well, I don't recall specifically, but  
20 I can say relative to the general retirement plan at  
21 Ford that I'm familiar with general retirement plans,  
22 but not Ford's and I think I undoubtedly clarified some  
23 things with Mike just for my understanding. The



24 medical plan, the same thing, you know, what -- some  
25 incidentals of the plan just so I knew generally how it

23

1 compared to what I knew from other employment and,  
2 yeah, pretty much walked through it.

3 But I can say that since Mike was there  
4 for the better part of six months when I started and he  
5 -- he owned this, so to speak, that I had a very -- at  
6 that time I -- I knew what was in here and I was  
7 comfortable that I could discuss issues with people  
8 that might have issues, but Mike handled the lion's  
9 share of them.

10 Q What were you told generally about  
11 efforts to have Ford salaried employees in '99 come  
12 over to ZF Batavia?

13 A Well, what I was -- what I saw was  
14 about 60 people that pretty much had signed up to do  
15 that and that there was a -- a negotiative process  
16 prior to my arrival where every existing ZF -- or I'm  
17 sorry, Ford Batavia employee was reviewed in terms of  
18 their fit for employment with the JV. And there was an  
19 emphasis to place employees from Ford Batavia into the  
20 joint venture if they were willing to come.

21 Q I imagine they were looking for the  
22 best of the bunch?

23 A I would hope so.

24 Q Well, did they get the best of the  
25 bunch?

24

1 A Not in every case.

2 Q All right. Now, did you have any  
3 conversations with any of the Ford transitional  
4 employees about their decision to come over to ZF  
5 Batavia or is it by the time you were there --

6 A Well, it was pretty much done. I have  
7 had a -- had one in my department, that's the safety  
8 security manager, who transitioned and he was, for  
9 example, originally scheduled to join the JV effective  
10 August of '99 and -- or, no, it couldn't have been. It  
11 must have been October of '99 and he came and asked me  
12 if I could shift his transition until 12/1 of '99 and I  
13 did that for him. And some other people -- I'm not  
14 exactly sure anymore who it was -- did that same thing.  
15 And basically there were a lot of questions about the  
16 cutoff date for doing it and whatnot, but, yeah, I  
17 mean, they're just incidental conversations.

18 Q Of the 15 people in this lawsuit, did  
19 you talk to any of them about their decision to come on  
20 board ZF Batavia?

21 A Not that I recall, going through those  
22 names in my mind.

23 Q Do you know all the names?

24 A No. I mean, if I read them, I know  
25 them. Did I hit on every -- every one of them,

25

1 probably about 12.

2 Q That's fair. I'll just refresh your  
3 memory. It's Wayne Whisman and Gary Vories, who are  
4 here, Pam Blanco, Bill DeVito, Ted Edrington, Ron  
5 Pearce, Don Williams, Jim Crump, Randy Newsome, Lee  
6 Stegman, Dena Stevens, Teri Parker, Dennis Baker, Rick  
7 Ervin, Michael Steward. You know who all those people  
8 are?

9 A Yes, I know every one of them.

10 Q Now that I've gone through the names,  
11 do you specifically recall any conversations you had  
12 with them prior to actually their joining ZF Batavia  
13 about their decision to join the company?

14 A No. I think just -- just about all of  
15 them were -- were already part of the JV by the time I  
16 arrived.

17 Q Do you specifically remember any of  
18 those 15 that hadn't joined ZF Batavia when you joined?

19 A No, I don't remember.

20 Q Okay. When I asked you about whether  
21 the best of the bunch had come over, you weren't  
22 responsible in any way for reviewing the performance

23 record of any of those 15 people before coming over to  
24 ZF Batavia, right?

25 A That's correct.

26

1 Q You didn't participate in any way in  
2 the decision to offer those people jobs?

3 A I did not.

4 Q Because you came in later?

5 A That's -- that's the main reason. I  
6 wasn't there.

7 Q In the last year or so has ZF Batavia  
8 been changing its policies with respect to the salaried  
9 people?

10 A Well, when the company started, we  
11 didn't have any policies and so we -- again, one of the  
12 things we did in starting this company was create  
13 policies and in the recent past we have modified some  
14 of the policies, while we continue to create policies  
15 as circumstances warrant.

16 Q Let me go over this drill again. Just  
17 a second. Let me hand you Exhibit 19, Mr. Sennish.  
18 Just put Exhibit 2 just off to your left there. We  
19 might come back to that one.

20 I'll just represent to you, sir, that  
21 Deposition Exhibit 19 is an answer filed by ZF Batavia

22 in this case, specifically an answer to our third  
23 amended complaint. Have you ever seen this document  
24 before?

25 A Yeah, I reviewed this.

27

1 Q Okay. Turn to page five if you could.  
2 See up there where it says paragraph 35?

3 A Yes.

4 Q Let me just read this and you tell me  
5 if I've read this right. "With respect to the  
6 allegations in paragraph 35 of the third amended  
7 complaint, ZFB admits that it is in the process of  
8 changing policies and procedures with respect to its  
9 salaried employees." That's what it says there, right?

10 A Yes, it does. That's pretty clear.

11 Q Because there's been a number of  
12 amended complaints -- this document was filed in March  
13 of this year. I think that same statement I can say  
14 appeared in an earlier answer that was filed. So in  
15 terms of the timing, what I'm just trying to find out  
16 is: As we look at the summer of 2002 or March 2003 and  
17 go back a year or six months or however you want to  
18 look at it, is it true that ZF Batavia is actually in  
19 the process of changing policies and procedures with  
20 respect to its salaried employees; is that a fair  
21 statement?

22                   A           I have to characterize the answer. We  
23                   are not on a -- a mission, plan, to restructure  
24                   salaried policies and, therefore, we're -- we're every  
25                   week reviewing and updating. We do from time to time

28

1                   when the situation, circumstances, environment changes  
2                   in the company, we re-look at policies and we modify  
3                   them. They're living documents, so to speak.

4                   Q           Well, when it says that you're in the  
5                   process of changing policies and procedures, is there  
6                   any policies and procedures that you can think of?

7                   A           That we're in right now the process of  
8                   changing?

9                   Q           Or, like I said, at the time this was  
10                  filed in March 2003 or earlier, I believe, when this  
11                  was first filed in the summer of last year.

12                  A           I mean, the -- the time frame is kind  
13                  of tough. I mean, we've -- we've made some amendments  
14                  to some policies and in that time frame we may very  
15                  well have.

16                  Q           Which ones are you thinking of when  
17                  you're talking about the ones that have changed?

18                  A           Well, the -- the one of most  
19                  significance that -- that jumps out is the -- the  
20                  personal excused days that were once at five days per

21 year, we modified that for a one-year period to three  
22 days.

23 Q And what period was that that you made  
24 that change?

25 A It was for the year 2002, I believe it

29

1 was, that it was three days.

2 Q All of 2002?

3 A Eleven to 12 months of it. I -- I  
4 don't know the --

5 Q I understand you might not specifically  
6 recall. I'm just trying to understand. And why was  
7 that change made?

8 A To my recollection, by and large we saw  
9 that a lot of employees, ZF Batavia new hires as well  
10 as other employees, were scheduling those days in  
11 advance as if they were vacation days. And we looked  
12 at some utilization rates and -- and how those were  
13 being applied. We looked at the state of the business  
14 in terms of our performance in our existing business  
15 and the -- the launch of the CVT and we had a concern  
16 relative to the number of employees that were away from  
17 work and that this was one of those things that, again,  
18 was generated by what we considered abuse of the intent  
19 of and clear wording of the policy that people were  
20 just scheduling in advance like vacation days. So we

21 -- we modified that down to three days and looked at  
22 other supplier companies, that -- that was not an  
23 unreasonable modification for a supplier company.

24 Q I understand that you reversed the  
25 policy back to five days?

30

1 A Yes, we did.

2 Q Why was that?

3 A The -- basically the feedback from  
4 employees, including managers, was that, "Hey, you  
5 know, this -- we -- I think we've got it under control.  
6 The people now understand that those were -- were --  
7 are days that are designated fundamentally for  
8 emergencies." And there was a negative reaction  
9 throughout the salaried workforce that, you know, they  
10 -- that that was modified.

11 And so we looked at all the attendant  
12 circumstances and collectively decided that we would  
13 reinstate the other two days and that we would have  
14 better controls to make sure that those days are  
15 utilized for emergencies and whatnot.

16 Q I imagine you issued some sort of memo  
17 to the salaried employees letting them know that the  
18 policy was back to five days?

19 A Yes, I believe we did.



20 MR. SIMON: All right. When I listed  
21 additional documents, I had asked for that one.  
22 I don't believe we have that one, Mr. Hunter.

23 BY MR. SIMON:

24 Q Well, back when you had changed it to  
25 three days, I understand there's a -- is there a policy

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1 committee that looks at the personnel policies?

2 A Yes, we have a policy committee.

3 Q You're on there and Mr. Huebner, right?

4 A That's correct.

5 Q Mr. Kehr, Ms. Appleton maybe?

6 A That's correct.

7 Q Anybody else?

8 A We have Rick Williams, our quality  
9 director, Dick Newark, our plant manager was -- they --  
10 they are, I would say, time to time and we typically  
11 have a recording secretary in there when we have  
12 meetings and we have one of our -- our expatriates,  
13 Herbert Mozer, is the chief engineer.

14 Q Do you take minutes of these meetings?

15 A Well, we -- we have someone in there  
16 who documents what actions we determine we're going to  
17 take and what -- if -- if we modify a policy, it's that  
18 individual who -- who handles the documents, but the  
19 so-called play-by-play of the meeting, no, we don't

20 take minutes of that nature.

21 Q But these documents that Mr. Mozer  
22 takes down, I imagine you still have them?

23 A Mr. Mozer?

24 Q Was he the recording secretary?

25 A No. No. No. He's chief engineer.

32

1 Q Who was the recording secretary?

2 A That would have last been Betina Clust,  
3 C-L-U-S-T.

4 Q So she takes notes of what the  
5 committee has decided with respect to certain policies?

6 A Yes. And she -- she handles the  
7 document flow.

8 Q And she doesn't throw those away, does  
9 she, afterwards?

10 A Not to my knowledge. I would hope she  
11 keeps them.

12 Q So whatever policy committee meeting  
13 that you had where it was ultimately decided that you  
14 were going to go from five days to three days, she  
15 would have some notes regarding that?

16 A If she was in the meeting that  
17 particular time, yes.

18 Q Or whoever the recording --

19 A Yes.

20 Q -- secretary, right?

21 A I -- I would expect that they wrote  
22 something down.

23 MR. SIMON: I'm going to be asking for  
24 those as well. As things come up in  
25 depositions, documents are identified that

33

1 maybe you weren't aware of, Mr. Hunter, but as  
2 they come up, they seem relevant to me. I'm  
3 just going to point it out, but I'll put it in  
4 a letter after the deposition.

5 BY MR. SIMON:

6 Q Roughly do you know when this policy  
7 committee -- was there a policy committee meeting where  
8 you decided that you're going to move from five days to  
9 three days?

10 A Yes, to my knowledge.

11 Q Do you remember what month that was?

12 A I'd say it's the very end of 2001 or at  
13 the very, very beginning of 2002.

14 Q And I imagine the group discussed these  
15 issues that you had testified about, that you felt the  
16 policy was being abused, that sort of thing?

17 A Yes.

18 Q Was there any one person in the

19 committee who was urging the committee to decide to go  
20 from five to three?

21 A I'd say probably myself.

22 Q Was there any dissent among the group?

23 A There, to my recollection, was a lot of  
24 discussion about it and I think what ultimately swayed  
25 everybody were the business conditions as well as the

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1 document -- documented scheduling of excused days as  
2 vacation days. And so that -- that precipitated an  
3 agreement that we would modify it.

4 Q Was the ultimate decision unanimous  
5 among the policy committee?

6 A To my knowledge it was, yes.

7 Q When you had the meeting, did anyone  
8 refer to Exhibit 2, which is this brochure summary that  
9 we've been discussing?

10 A Not to my recollection, no.

11 Q Well, during the meeting you, of  
12 course, were aware that Exhibit 2 existed, right?

13 A Oh, absolutely.

14 Q Did you explain to anyone in the group  
15 that just in case they didn't know, just so you  
16 understand, this is what when people came from Ford to  
17 ZF Batavia they were told they were going to give five

18 personal or sick days and now we're moving it to three?

19 Did you tell anybody that?

20 A Well, we discussed the -- the reality  
21 that we are at five and everybody in -- on roll as a  
22 salaried employee at that time, transition, new hire,  
23 ZF person had five personal days and that we were  
24 deliberately determining for everybody that it was  
25 going to go to three because the policies are -- are

35

1 fluid and living and it's the discretion of the company  
2 and that's a decision we made for what we felt were  
3 valid reasons.

4 Q There was no discussion that this was  
5 something that we've told these Ford transitional  
6 employees in writing, that they're going to get five  
7 days, and now we're changing it? Was there any sort of  
8 discussion that this is something we've told them in  
9 writing?

10 A No, not that I recall.

11 Q Is it fair to say then when we're  
12 talking about ZF Batavia making change in their  
13 policies with respect to the salaried workforce,  
14 there's no discussion of whether the policies  
15 contradict what statements are in the brochure summary  
16 that is Exhibit 2? Is that fair?

17 A Could you please state that again?

18 Q Yes. When you're changing a policy  
19 such as the personal sick days, from what I can tell  
20 there's no discussion about Exhibit 2, which is the  
21 summary package given to Ford transitionals; is that  
22 right?

23 A No. I would answer that on a case-by-  
24 case basis. In this particular case that I -- that  
25 we're discussing, it was a forgone knowledge that that

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1 applied to all employees, whether they were transition  
2 or otherwise. It -- it just didn't -- well, let's go  
3 back and make sure that we think is correct. No, we  
4 didn't do that, because like Karl Kehr, for instance,  
5 was part of the transition team and he was at the  
6 meeting and he knew and everybody knew that -- that  
7 everybody was entitled to five personal days at that  
8 point in time.

9 Q Well, are there times that you've made  
10 changes in the personnel policies with respect to the  
11 salaried workforce where you have specifically  
12 discussed Exhibit 2?

13 A Not that I recall.

14 Q So if there's a personnel policy that  
15 is to be changed, it's your position that the company  
16 changes them at their discretion and to be fair,

17       there's no consideration that these were promises made  
18       in writing in 1999?

19 MR. HUNTER: Objection. Form of the  
20 question.

21 THE WITNESS: That would be a  
22 mischaracterization.

23 BY MR. SIMON:

24 Q You don't believe that this Exhibit 2  
25 contain promises; is that correct?

37

1                   A           I just -- I've -- I've never known a  
2       company's policies and procedures to be a promise that  
3       will never, ever change. I -- I never looked at --  
4       when I change companies, I say that's good and they're  
5       subject to change.

6 Q Exhibit 2, does it say anywhere that  
7 this a summary of the policies and procedures at ZF  
8 Batavia?

9 MR. HUNTER: Objection. Again, the  
10 document speaks for itself. If you want him to  
11 review the document, he can look for the terms.  
12 Go ahead.

13 MR. SIMON: Sure.

14 MR. HUNTER: What terms are we looking  
15 for, again, Steve?

16 MR. SIMON: Does this document purport

17 to be a summary of the policies and procedures  
18 at ZF Batavia?

19 THE WITNESS: Plan provisions and  
20 eligibility do not constitute an employment  
21 contract with any individual. That's pretty  
22 standard. But this represents policies,  
23 benefit plans, but not all of them. I think  
24 that "key features" is pretty representative of  
25 what this is and relative to the full scope of

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1 policies, plans and procedures.

2 BY MR. SIMON:

3 Q In terms of how you understand the  
4 document, you're certainly not basing your  
5 characterization of the document as a set of policies,  
6 procedures based on anything in the document that  
7 actually calls it a summary of policies and procedures,  
8 right?

9 A I don't know. I -- the -- my comment  
10 is based on what I know, what my experience has been.  
11 And fundamentally what I see in here is a -- a summary  
12 of key features of the Batavia, as it says, benefit  
13 plans, which to me means everything that's in there.  
14 And they're not all benefit plans. There's policies in  
15 there.



16 Q But you don't see the word policy in  
17 there?

18 A No, I don't. I mean, I'll read if you  
19 want me to, but I don't -- in that -- in that section  
20 there I don't, no.

21 Q It's not in there. I understand.  
22 Salaried employees at ZF Batavia, are they entitled to  
23 overtime compensation?

24 A Yes, they are.

25 Q And was there a period of time where

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1 salaried employees were not receiving compensation for  
2 overtime?

3 A Not to my knowledge.

4 Q Mr. Sennish, are you unaware of  
5 problems with the overtime budget in the spring of last  
6 year?

7 A No, I'm not unaware of it.

8 Q Was there a problem with the budget for  
9 overtime last year at the plant?

10 A There was basically a problem with  
11 every department budget with salaried overtime. And  
12 our policy is fairly straightforward, as far as I'm  
13 concerned, with the expectation that exempt salaried  
14 employees are expected to work basically a standard  
15 nine-hour day without any compensation, overtime

16 compensation, as it relates to whatever eight hours  
17 means to people.

18 And so we had a salaried budget in  
19 years prior, and I use the term it blew out each year,  
20 and ultimately when the fiscal constraints got tighter  
21 and tighter and the -- the business was investing more  
22 and more money, there was a lot more scrutiny of our  
23 budgeting. Not that there wasn't a lot of it to begin  
24 with, but when we looked at that blow-out in salaried  
25 overtime relative to budget, each department was

40

1 allocated -- I don't know whether it was monthly or  
2 quarterly, this is -- you can't -- you can't overspend  
3 by -- by quarter. You know, it's like, yeah, I can --  
4 front-load spending and then at the end of the year,  
5 you know, whatever. The idea was to month by month  
6 track our overtime spending relative to our budgetary  
7 limits. And I had one for HR and I tracked my spending  
8 to those limits and stayed within those limits.

9 Now, if any other department didn't  
10 stay within those limits or, I don't know, stopped  
11 paying overtime, it wasn't anything that I was aware  
12 of.

13 Q Are you aware of in March or April of  
14 last year people in the maintenance department being

15 told that "We've just about run out on overtime budget  
16 and you're going to have to work two or three weekends  
17 without overtime, as well as you're going to have to  
18 work overtime throughout the week and not be paid"?  
19 Are you aware --

20 A No. No. There's no reason HR would  
21 know that.

22 Q HR would not be aware that people were  
23 being told that they're not going to be paid overtime?

24 A I wasn't aware. If it happened, I  
25 wasn't aware.

41

1 Q Is it your position that HR doesn't  
2 have the responsibility to know something like that?

3 A No, I didn't say that.

4 Q Well, do they?

5 A Yes, they -- if somebody brings it to  
6 my attention that there's been a decision made in  
7 whatever organization that we're not going to pay  
8 people for working overtime, if -- if that's not  
9 brought to my attention, I don't know it. And in this  
10 case, unless I'm having a blackout for some period in  
11 my mind, I never heard of that.

12 Q Well, would you be upset if you found  
13 that the maintenance department had a meeting where  
14 they were told they were going to work overtime and not

15 be paid and that HR wasn't told that this was going on?

16 Would you be upset about that?

17 A From -- from which -- you asked me two  
18 questions. So would I --

19 Q I just want --

20 A -- be upset because -- upset because I  
21 didn't hear about because I'm in HR or would I be upset  
22 because people were working a lot of overtime?

23 Q That's fair. Would you be upset that  
24 you didn't know about it?

25 A I -- I would certainly question why

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1 somebody made a decision like that and didn't bring it  
2 to my attention. If -- if not the person that made the  
3 decision, the people that were impacted by it.

4 Q It would be their responsibility?

5 A No, I didn't say it would be their  
6 responsibility. I would be -- I would be surprised  
7 what -- that that wasn't brought to our attention.

8 Q And so it is your testimony that it was  
9 never brought to your attention in the spring of last  
10 year that people were told in the maintenance  
11 department and perhaps other departments that because  
12 of budgetary concerns they're not going to be paid  
13 overtime?

14 A No, I do not recall that at all.

15 Q Well, let me go back to this. You said  
16 I had asked you two questions. I'll go back to the  
17 other part of it. Do you see in Exhibit 2 where it  
18 says authorized overtime will be paid, in the upper  
19 left corner, under where it says salary in caps?

20 A Yeah.

21 Q And, as you said, that is the current  
22 policy with respect to Ford transitional employees or  
23 other exempt salaried employees as well?

24 A Authorized overtime is paid.

25 Q Well, would it concern you then that

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1 not only didn't you hear about it, but would it concern  
2 you that people were actually working overtime and not  
3 being paid, seeing as in Exhibit 2 it says they're  
4 supposed to be paid?

5 A Well, you know, I have a definition and  
6 I have a pretty good work history of working in  
7 operations as well as in HR, and exempt employees, you  
8 know, are not guaranteed overtime for working hours,  
9 and authorized hours are authorized hours and hours  
10 that aren't authorized aren't -- aren't paid.

11 So, yeah, I -- I would be concerned why  
12 a decision was made that was contrary to what our  
13 practice was, but it -- I guess that would be tempered

14 by the fact that, you know, exempt salaried employees,  
15 and my own personal experience included, don't always  
16 get paid for working hours beyond eight or nine or  
17 whatever the heck they feel a full day's work is.

18 Q You work a lot of hours in your  
19 department that are beyond 40 hours and you don't get  
20 paid overtime, right?

21 A Absolutely not, and we work a heck of a  
22 lot of hours.

23 Q And to be fair, your position is that  
24 salaried employees shouldn't be paid overtime if it was  
25 up to you?

44

1 A My position?

2 Q Yes.

3 A No, I don't expect to get paid overtime  
4 for working 12 hours a day.

5 Q And if it was up to you, other salaried  
6 employees wouldn't be paid overtime either? Exempt  
7 salaried employees.

8 A No. I think there are circumstances  
9 where exempt salaried employees would be paid overtime.

10 Q What are those circumstances?

11 A Well, I --

12 MR. HUNTER: Steve, this as to his

13 personal views?

14 THE WITNESS: Yes.

15 MR. SIMON: Sure.

16 THE WITNESS: Yeah. When -- when I was  
17 a maintenance manager in operations and I  
18 worked overtime as a maintenance manager, I  
19 didn't get paid, but the people that supervised  
20 hourly employees that worked for me, I paid  
21 them generally. But I -- you know, there were  
22 -- where I authorized them to work a piece or a  
23 block of overtime at General Motors where I was  
24 working then, I paid them. It was my  
25 authorization. And if I didn't authorize it,

45

1 they wouldn't get paid. But I typically  
2 authorized the hours that I felt were  
3 appropriate.

4 And when I was a first-line supervisor  
5 at GM, by and large I got paid overtime when I  
6 was managing people who were getting paid  
7 overtime. So in that circumstance I think  
8 that's fair.

9 And I think in emergency circumstances  
10 where, "Hey, we need you to come in on  
11 Saturday, we've got to get this done, we've got  
12 to, you know, crank out these numbers, this

13 data, whatever, and I need you to be here,"  
14 that I would -- I would pay HR people for  
15 something like that.

16 But the general day-to-day, here's your  
17 job and it takes you more than eight hours or  
18 nine hours to do it, I don't know why an exempt  
19 salaried employee would expect that in every  
20 case they're going to get paid overtime.  
21 That's my personal opinion.

22 BY MR. SIMON:

23 Q For the positions that my clients hold,  
24 and they hold some different positions, and I can go  
25 through the list, but do they hold positions where, as

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1 you've described it, those are positions where in the  
2 right circumstances it would be acceptable to you that  
3 they get paid overtime?

4 MR. HUNTER: Objection to relevance. I  
5 don't understand how Mr. Sennish's personal  
6 opinions --

7 MR. SIMON: He's one of the decision  
8 makers at the company, so I'm entitled to ask  
9 him his perspective. Like Mr. --

10 MR. HUNTER: Let me have a continuing  
11 objection to this series of questions.



12 MR. SIMON: Sure, you can have a  
13 continuing objection.

14 BY MR. SIMON:

15 Q Like Mr. Whisman, you're familiar with  
16 his position?

17 A Yeah.

18 Q Now, is he in the type of position  
19 where, as you described when you were talking about  
20 your background at GM, is that the sort of position  
21 where if it's authorized overtime work, that he should  
22 be compensated for overtime?

23 A If -- if that -- that work is  
24 authorized by his supervisor and -- and if he's  
25 supervising hourly employees, I would support that.

47

1 Q So for front-line supervisors you think  
2 that in the right circumstances overtime should be  
3 compensated?

4 A By and large, yes, I do. That's my  
5 opinion.

6 MR. VANWAY: I'm still confused. Are  
7 we talking about his personal opinions? Are  
8 you asking his --

9 MR. SIMON: Yes.

10 MR. VANWAY: -- personal opinions or --

11 THE WITNESS: I keep --

12 MR. SIMON: Yes.

13 THE WITNESS: -- saying it's my  
14 opinion.

15 MR. VANWAY: -- interpreting the  
16 company's policies and procedures?

17 MR. SIMON: He said it's his personal  
18 opinion. That's what I heard. There's no  
19 dispute.

20 MR. VANWAY: Okay.

21 BY MR. SIMON:

22 Q You also said that it's ZF Batavia  
23 management's right to change the policies that are in  
24 place at its discretion; is it not?

25 MR. HUNTER: Again, is this his

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1 personal opinion now or --

2 MR. SIMON: No. No.

3 MR. HUNTER: -- the company's position?

4 MR. SIMON: All right.

5 BY MR. SIMON:

6 Q Is that the company's position? Do  
7 they --

8 A No.

9 Q -- think they're entitled to change the  
10 personnel policies regarding the salaried workforce as

11           they see fit?

12                   A           As -- yeah, they -- as -- as they see  
13           fit. I would -- wouldn't characterize it that way. I  
14           would say given the -- the prevailing business  
15           conditions, policies do have to be reviewed from time  
16           to time and, yeah, that's our company position.

17                   Q           And you're certainly one of the key  
18           decision makers regarding changes in the personnel  
19           policies regarding the salaried workforce; are you not?

20                   A           That's correct.

21                   Q           So if there's a discussion about paying  
22           salaried people overtime, you're certainly going to let  
23           them know your opinion, aren't you?

24                   A           I always do.

25                   Q           And the fact is if somebody asks for

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1           your opinion, you're going to say that I think in most  
2           instances people who are salaried exempt shouldn't be  
3           paid overtime except in exceptional circumstances  
4           because that's your opinion, isn't it?

5                   A           I gave you my opinion.

6                   Q           And did I fairly characterize it just  
7           now?

8                   A           In a nutshell, yes.

9                   Q           Okay. The policy regarding casual  
10          time, I think you obliquely referred to it. You said

11 that a salaried employee at ZF Batavia is expected to  
12 work nine hours every day, right, and get paid for  
13 eight hours?

14 A That's -- that's our general policy.  
15 Well, no, getting paid for eight hours, no, I don't  
16 accept that piece of it. I don't -- I don't know when  
17 you're -- when you get a monthly salary how you break  
18 it into eight hours. I -- but we think a typical  
19 standard workday for an exempt salaried employee should  
20 be about nine hours.

21 Q About nine hours or do you really  
22 expect them to be there nine hours every day, to be  
23 fair?

24 A Well, ideally they'd be there nine  
25 hours, but human beings being what they are and

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1 personal business being what it is and et cetera, et  
2 cetera, you know, if it averages nine hours, that --  
3 that's pretty much how the real world works.

4 Q I imagine you were told about the  
5 lawsuit when it was filed last summer.

6 A Mr. Whisman brought it up to my office  
7 personally.

8 Q That's right. To be fair, you had  
9 heard rumblings in the plant before Mr. Whisman

10       approached you with the lawsuit that there was going to  
11       be a lawsuit filed?

12               A       That's correct.

13               Q       What kind of things were you hearing?

14               A       That -- and, again, this is what I was  
15       hearing, that people were meeting off site of ZFB, Ford  
16       transition salaried employees were -- were getting  
17       together outside of work and discussing what they felt  
18       were some, I don't know, injustices, erroneous  
19       applications, I don't know. But there was -- there was  
20       general concern on their part about what they felt  
21       their treatment was with ZF Batavia relative to what  
22       they felt they should be getting.

23               Q       You said erroneous application. I  
24       didn't know what you meant by that.

25               A       Well, I -- I guess with whatever they

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1       were told when they joined the JV, that they must have  
2       felt that we were not applying what they thought they  
3       were going to get consistent with that -- that thought.

4               Q       And who told you these things?

5               A       Well, that is just absolute what was  
6       going in the -- the -- the rumor mill, the discussions,  
7       hey, you know, there -- there was a sense that there  
8       was a group of people who were not happy with their --  
9       their lot at ZF Batavia.

10 Q Is it fair to say that had been going  
11 on for maybe two or three months before the lawsuit was  
12 filed?

13 A I think that's fair. I don't know  
14 exactly.

15 Q That's your recollection?

16 A Yeah. That's certainly in the ballpark  
17 as I recall.

18 Q Well, I think you had said there that  
19 one of the complaints was that they were told certain  
20 things in 1999 and that the company wasn't following  
21 them currently, right? That was one of the things you  
22 were hearing?

23 A That's one of the things I heard,  
24 yeah.

25 Q Well, it was true, wasn't it?

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1 A I don't know. There were some policy  
2 modifications. I guess if that qualifies, then they --  
3 maybe they feel that's -- that's the foundation of a  
4 misapplication of what they were told.

5 Q Well, I mean, there's really no dispute  
6 that they were told in 1999 that they were going to get  
7 five personal or sick days, fair?

8 A That's what it says.

9 Q Right. And you obviously knew that  
10 that had been changed to three days?

11 A Just like ZF Batavia new hires were  
12 told.

13 Q And also bereavement leave had been  
14 altered, right?

15 A Yeah. We had a -- a policy created for  
16 bereavement, yes.

17 Q Well, you see that on Exhibit 2 the  
18 funeral leave says three days, right?

19 A Up to three-day leave, yes.

20 Q And that was changed to what, one or  
21 two days?

22 A Depending on the -- the relative. You  
23 know, immediate family member, relative and then aunts  
24 and uncles and whatnot.

25 Q But when you changed it to one day, if

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1 it was for perhaps a more distant relative, you would  
2 agree, Mr. Sennish, that was a change in the policy  
3 from what's on Exhibit 2?

4 A Well, up to three days. I'm not  
5 exactly sure that it's really a change because up to  
6 three days to me contemplates that there are varying  
7 degrees of -- of bereavement and applied accordingly.

8 Q You said there "I'm not sure." Was it

9 a change with bereavement leave or not?

10 A No.

11 Q The nine-hour policy that we were  
12 talking about before, was that something that was  
13 changed during your tenure at ZF Batavia or in your  
14 mind has that been the consistent policy throughout  
15 your time?

16 A Well, I -- I have to answer that. We,  
17 number one, created our first policy in that regard,  
18 that there wasn't one as a new company. We were  
19 creating policies as we evolved as a company. So you  
20 could ask -- we have 300-odd salaried employees and you  
21 -- you -- you could ask any one of them and they would  
22 probably have a different interpretation of what  
23 exactly the practice was up to the point the policy was  
24 implemented.

25 But we -- I would say that by default

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1 we followed the prevailing practices that existed in  
2 Batavia until we established our own policies.

3 Q You had followed what Ford practices  
4 had been?

5 A Yeah. Default more than saying "Here  
6 we're going to do exactly as Ford does." No, that was  
7 not the case, nor was there any document that said



8 "Until otherwise notified, here's what we're going to  
9 do." It was just the practice in the plant that  
10 typically carried over and you can only change so much  
11 so fast and so there -- there was an evolutionary, you  
12 know, process of creating this new company.

13 Q Do you know if there was an expectation  
14 in the plant when you first started that ZF Batavia was  
15 going to follow Ford's overtime policy?

16 A I don't know that there was that  
17 expectation, but, again, my opinion was that most  
18 people expected that what, you know, they experienced  
19 in terms of working overtime was going to continue and  
20 it by and large did or there would have been problems.

21 Q We talked about the three days versus  
22 one day. Was that policy then changed back to  
23 something else after that?

24 A Not that I recall, no.

25 Q I just mean as opposed to the sick

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1 leave. It went to three days and then later it went  
2 back to five, right?

3 A Yes.

4 Q There's no question that the lawsuit  
5 was filed and sometime after the lawsuit was filed you  
6 went back to five days of personal leave, right?

7 A If we did, it -- it was purely

8 coincidental if that was -- if that was the timing.

9 Q Do you think that the lawsuit has any  
10 effect on personnel policy with respect to the Ford  
11 transitionals or even individual Ford transitional  
12 employees?

13 A No, because lawsuits are part of doing  
14 business. They -- they happen. So if you're going to  
15 run your business because of lawsuits or for fear of  
16 lawsuits, you might as well close up shop.

17 Q Did Lee Stegman or Jim Crump, to your  
18 knowledge were they told they were having performance  
19 problems before, let's say, this time last year?

20 A Well, I don't know if it -- you know,  
21 to say this time last year. I know that both of those  
22 gentlemen did, indeed, have performance problems to  
23 whatever extent.

24 Q And then since that time their  
25 supervisors have advised both those gentlemen that

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1 their performance has turned around?

2 A To my knowledge, I think that's  
3 correct.

4 Q Did the fact that they were  
5 participating in this lawsuit have anything to do with  
6 that?

7 A I hope not.

8 Q Have you taken any steps to see that  
9 people in the lawsuit suffer some sort of negative  
10 impact during their employment?

11 A Absolutely not.

12 Q When you first started in '99, was  
13 there any talk between you and Mr. Warden or perhaps  
14 Mr. Adams that the Ford transitional employees'  
15 salaries were higher than the market would otherwise  
16 bear?

17 A The extent of that discussion was how  
18 did ZF Batavia establish its salary bands. And that  
19 was done on a regional basis relative to other  
20 comparable employers where we established those. And  
21 as it shook out, they were lower than the Ford  
22 transition salary bands and as a result of that, don't  
23 know exactly, but by and large the salaries of the Ford  
24 transitional employees were higher than the new hire ZF  
25 Batavia employees.

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1 Q So the situation in 2000 then is that  
2 you've got Ford transitional employees, their bands --  
3 their salary bands go up much higher than your ZF  
4 Batavia new hires? I think that's what you said.

5 A Yes.

6 Q Did that concern you that you've got

7 two different groups there on different bands?

8 A The whole -- the whole JV unfortunately  
9 is predicated on two different bands.

10 Q And was it your understanding there  
11 would be an effort made to have those bands ultimately  
12 intersect?

13 A No.

14 Q You've not been told by anyone there or  
15 have you yourself voiced an opinion that you think that  
16 the Ford transitional salaries ultimately should come  
17 down to meet the ZFB new hires or perhaps the ZFB new  
18 hires come up a bit to meet the Ford transitional  
19 salaries?

20 A No, there's -- we chronicle two  
21 separate salary bands and we look at Ford transition  
22 under their band and ZF Batavia new hires under their  
23 bands and there's no question that ZFBA employees come  
24 and -- and say "Well, how come that person makes so  
25 much more than me? I should get more money," because

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1 people talk. But, you know, has that altered our --  
2 our application of merit increases and whatnot, no.

3 Q We had some testimony in a deposition  
4 yesterday that HR may have prepared a document that it  
5 gave to managers that with respect to their

6 determination of what merit increases their employees  
7 should get, that there was recommendation that the Ford  
8 transitional employees have a lower percent merit  
9 increase than the ZF Batavia new hires. Are you aware  
10 of such a document?

11 A No, I don't recall that.

12 Q Are you aware of such a policy?

13 A No.

14 Q Are you aware of any effort from the  
15 onset of ZF Batavia to lower the merit increases for  
16 Ford transitional employees over the years so that  
17 their salaries ultimately are more in line with the ZFB  
18 new hires?

19 A No.

20 Q Do you think that would be unfair for  
21 the company to do that?

22 A Well, I -- I just struggle with  
23 fairness, you know, in -- in something like that. I --  
24 I think that there's -- that the -- using the term, you  
25 know, is it fair or not, you know, life isn't fair.

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1 And what I -- what I would say is that the fact that we  
2 have in our hourly workforce and our salaried workforce  
3 we have -- we have a group of expatriates in design and  
4 application engineering, we have a group of Ford  
5 salaried transitional people throughout the

6 organization, we have ZF new hires, we have officers on  
7 contracts, we have ZF employees working in Batavia and  
8 it's a constellation. We have Ford hourly employees  
9 who have different benefits, different contracts,  
10 different wages ultimately than the ZF people that work  
11 right alongside of them. It -- it's the nature of this  
12 joint venture and it's one of the -- the -- the -- the  
13 fundamentals that make it a unique and uniquely  
14 difficult environment.

15 So I just don't recall any -- any basis  
16 for any discussions that says we've got to equalize the  
17 ZFB new hires with the Ford transitions and we've got  
18 to -- to implement a merit and -- and incentive pays,  
19 you know, to absolutely altogether in the aggregate  
20 everybody's -- you've got a bell curve and everybody's  
21 distributed where they ought to be and it's hunky-dory.  
22 I just don't know that that ever occurred.

23 Q Would you agree, though, if it was ZF  
24 Batavia's intent to equalize the salaries, that that's  
25 something that the company should have told the Ford

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1 transitional employees before they made their decision  
2 to join?

3 MR. HUNTER: Object to the form of the  
4 question.

5 THE WITNESS: If -- if -- if there was  
6 a statement to the -- you know, to the  
7 contrary, I'm not aware of it. And if there  
8 was a -- a belief on the part of the Ford  
9 transition folks that their bands were going to  
10 stay active and that they were going to stay in  
11 those bands, then to me, irrespective of what  
12 the new company did with its new employees,  
13 that, you know, in one respect isn't any of  
14 their business and -- and vice-a-versa. But I  
15 would expect that, you know, I'm -- I'm a Ford  
16 employee, I'm getting an opportunity to work at  
17 this joint venture, I'm going to take it and so  
18 what -- what are -- what are the -- the  
19 provisions that will apply to me.

20 And if there was a -- a plan to  
21 structurally over time reduce their earnings  
22 down to what we consider a tier-one automotive  
23 supplier level, I think that they should have  
24 known that, if that was the case. But I don't  
25 know that to be the case.

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1 BY MR. SIMON:

2 Q All right. Is your salary or your  
3 bonuses you receive at all correlated to what someone  
4 in the corresponding position at Ford gets?

5                   A           They're -- they're quite a bit  
6           different. A corresponding Ford employee's band is --  
7           is much higher than mine.

8                   Q           Have you ever told anybody that you  
9           received a certain bonus because someone in the  
10          corresponding position at Ford received a similar  
11          bonus? Did you ever tell anybody anything like that?

12                  A           No. And most of the time I've been  
13          with the JV my corresponding people at Ford didn't get  
14          any bonus.

15                  Q           Did you tell anybody anything like that  
16          at all? I might not be quoting it exactly. That you  
17          explained to somebody that your salary or your bonus  
18          structure is in some way tied to what somebody in the  
19          corresponding position in HR at Ford gets?

20                  A           No, because that's not true.

21                  Q           Have you ever told the salaried  
22          workforce or individual employees that you kind of see  
23          your job as you're there to kind of stir the pot?

24                  A           Pardon me?

25                  Q           Have you ever told people that your job

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1          is to stir the pot?

2                  A           I would say I sure as heck didn't use  
3          those words. But when you -- when you -- when you take



4 a -- and I -- you know, the record speaks for itself.  
5 When you take a grossly under-performing plant -- when  
6 I went to American Axle those were grossly under-  
7 performing plants, and you get -- from my perspective,  
8 this particular ZF Batavia plant got a new lease on  
9 life with the joint venture because there was no  
10 product plan post-2005. The plant was going to be  
11 mothballed.

12 So ZF joins with Ford, brings in their  
13 technology, makes investments as a -- as a joint  
14 company and you have to make change. If we continued  
15 to do everything the way we were doing it in that  
16 plant, we would -- we would be failing to an extent  
17 that we -- we just would have no viability.

18 And I think any of your -- the -- the  
19 plaintiffs in -- in this -- this action here would tell  
20 you that they know that that plant was grossly under-  
21 performing and it's performing better today. And I do  
22 believe that it's performing better today because of  
23 the changes that were made since the inception of the  
24 JV. So, yes, I'm -- I'm there to make change. Call it  
25 stirring the pot. Not me.

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1 Q Did you ever say maybe "I'm here to  
2 kind of shake things up," that sort of thing?

3 A That would -- I'd say from -- from

4 stirring things up to shaking things up you're now  
5 getting closer to what I might have implied to people,  
6 that, yeah, I'm -- I'm here to help make change and  
7 make this place more effective.

8 Q Is there a phrase that you used to  
9 people that you can think of? You knew that stir the  
10 pot was wrong. But is there a similar phrase that  
11 you've used with people?

12 A No. Because I -- I just -- I don't  
13 imagine ever being in a position where I tell "Well, my  
14 job here is to do this." I mean, I did my job. I do  
15 my job. And, hey, that's -- I don't -- I just don't  
16 recall using a figure of speech to say I'm here to --  
17 yeah, I'm here to implement change; I guarantee I said  
18 that.

19 Q With regards to any grumblings you  
20 heard before this lawsuit was filed, did you ever have  
21 a meeting with individuals or at a group level where  
22 you told people "Hey, if you don't like it here, I've  
23 got a stack of resumes, people who want to fill your  
24 job, so there's the door"?

25 A Was that a -- a sentence or two in a

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1 five to ten minute speech? Yeah, that -- that was in  
2 there.

3 Q What speech? What meeting are you  
4 talking about?

5 A We for -- for years held weekly  
6 meetings with the operations management that were  
7 facilitated by human resources. And they -- they  
8 started out every Wednesday for a half an hour with the  
9 day shift operations management, primarily the group  
10 leaders, and then the same afternoon with the afternoon  
11 shift group leaders and operations management.

12 And it was initially set up as a labor  
13 relations training and simultaneous discussion of  
14 issues on the floor so we could tie reality in with the  
15 training.

16 And, I don't know, after we had been  
17 doing those for the better part of just say two years  
18 and I guess in that two-to-three-month period that you  
19 referenced prior to the -- the issuance of this  
20 particular suit, and myself, the -- the controller, the  
21 plant manager, the labor relations manager, the  
22 director of information technology and the quality  
23 director all came to a -- a meeting on that -- the  
24 meetings on a particular day, and we talked about, you  
25 know, what was in -- in the wind with feedback that

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1 there were a lot of disgruntled Ford transition  
2 salaried employees.

3                               And I gave pretty much an identical  
4       speech, statement, whatever, at the two meetings that  
5       day. And the characterization that I walked in and  
6       said "Go ahead and quit because I've got a stack of  
7       resumes" is a pretty gross mischaracterization of that  
8       talk.

9                               Q           Well, what else did you say during that  
10      talk?

11                            A           Well, during the talk it was -- it was  
12      about the state of the business, what the joint  
13      venture's all about, why Ford gave the plant to ZF to  
14      run and what our responsibility was to -- to improve  
15      performance, to -- to change the way we do business for  
16      the better and that the essence of what I said at the  
17      end and the -- the better quote that I think somebody  
18      should have made was that "If you dislike working here  
19      that much, the real injustice you're doing is to  
20      yourself. That you have to come into work every day  
21      and you're so disgruntled that the biggest injustice is  
22      to yourself. There's a lot of people that want to work  
23      here. I get -- I get resumes in the mail cold every  
24      day. We've got all kinds of people that want to work  
25      here. And if -- and if you dislike this place that

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1       much, you're doing the biggest disservice to yourself

2 and perhaps you ought to go work somewhere else."

3 Yeah, I made that statement, but it was  
4 part of a five to ten minute speech. And it was  
5 nothing of the sort that "Why don't you just quit."  
6 That was not it at all. It's like we've got to figure  
7 out how to work better together, get over all this crap  
8 because it's deteriorating the business. And that was  
9 the essence of the speech.

10 Q When you said "If you don't like it,  
11 I've got a stack of resumes," that wasn't very well  
12 received, was it, Mr. Sennish?

13 A In the -- in the overall context I  
14 don't know why that would have been out of context and  
15 not very well received because it wasn't said like just  
16 "I've got a stack of resumes. We don't need you."  
17 That's the implication, and that is not what I -- at  
18 all what I said.

19 Q Well, you were there at the meeting.  
20 When you said that about the stack of resumes, what was  
21 the reaction of the group either verbally or  
22 nonverbally?

23 A It's always nonverbal. There was  
24 hardly ever any -- hardly ever any spontaneous feedback  
25 in those meetings. But the point of the matter is "If

1 you dislike working here that much, if you really don't

2       like this place that much, there's a lot of people that  
3       want to work here. It isn't -- there's a lot of people  
4       that would love to work here." That's the point, not  
5       "Get the hell out of here because I'm going to hire  
6       somebody else."

7                       I mean, I made the statement and the  
8       reason I identified all those other people there was  
9       because they observed the same thing and I would gather  
10      that their assessment of that piece of it was based on  
11      the fact that how can you work somewhere that you hate  
12      so much.

13                   Q       What was the nonverbal response?

14                   A       The -- I -- I -- nondescript.

15                   Q       People just nodded their heads, that  
16      sort of thing?

17                   A       Yeah. Because when I talk, I -- I look  
18      around and I don't -- no, I didn't -- nondescript.  
19      They basically just sat there.

20                   Q       Well, did you get the reaction you  
21      wanted?

22                   A       Well, as I said, there's hardly ever  
23      any spontaneous feedback. And my expectation going in  
24      there was that I probably wasn't going to get any  
25      feedback.

1                   But the point was is that we -- we  
2           needed to have a broader perspective of the company and  
3           -- and this -- this disgruntlement, that let's put this  
4           thing into perspective. You know, we can't be what we  
5           always were. That's a recipe for failure. That's why  
6           Ford got rid of the plant. And our job was to turn it  
7           around and this kind of dissatisfaction with -- with  
8           your workplace is not helping us turn the business  
9           around.

10                   Q           Well, weren't people upset because --  
11           prior to this meeting because they were told they were  
12           going to have to work overtime and not be paid?

13                   A           I don't know that anybody told them  
14           they wouldn't be paid.

15                   Q           Were people upset about going from five  
16           days to three days of sick leave?

17                   A           There -- like I said, there was a lot  
18           of negative feedback.

19                   Q           But as you --

20                   A           But there was a lot of people that  
21           didn't comment either. So --

22                   Q           Going in, you understood that there  
23           were people who were upset and that's why you addressed  
24           your comments "Look, if you're so upset coming to your  
25           job, why do this to yourself? You ought to leave,"

1 right?

2 A That's --

3 Q All right. So you understood people  
4 were upset. One of the reasons they were upset is  
5 because there were things promised to them in '99 that  
6 were being taken away; is that right?

7 A I don't know. Like I said, I told you  
8 what I heard in the wind, but nobody sat there and said  
9 "Well, you know, Len, you're full of crap. I mean, I'm  
10 not getting paid for overtime." If -- and they were  
11 all in there.

12 Q Did you know why they were upset for  
13 any specific reason?

14 A Well, I -- I knew generally that there  
15 was a belief that they were not getting what they felt  
16 they should be getting, having transitioned from Ford  
17 to the joint venture. I knew that generally.

18 Q And you knew it had something to do  
19 with Exhibit 2, right, the benefit summary?

20 A Well, I figured it had to because that  
21 -- that is the document that they all were presented  
22 with, as far as I know, when they joined the JV. That  
23 there was -- somebody had to talk to them about coming  
24 to work at the joint venture, so, yes.

25 Q And you told them at this meeting or



1 perhaps a different meeting that "If you're not getting  
2 what you were promised, then sue me"?

3 A Well, I -- again, if I made a statement  
4 like that, it sure wasn't those words. And -- and,  
5 again, that's what I guess I get a little energized  
6 about is that it's the -- the implication that I walk  
7 in and I tell people "Sue me." That's -- that's not it  
8 at all.

9 It's like people talk about filing  
10 lawsuits. That's your prerogative. You have a right  
11 to file. I can't stop you from filing a lawsuit. Yep,  
12 I bet I said that in a meeting.

13 Q So when this lawsuit was filed, it was  
14 certainly expected on your part?

15 A When Mr. Whisman brought it into my  
16 office, I was not surprised.

17 Q Don't you think the better HR practice  
18 would have been to try to resolve it before a lawsuit  
19 was generated?

20 A Well, I guess that was part of the  
21 discussion that we -- part of the reason for having  
22 that meeting where I -- I made a talk and that we'd met  
23 face to face with that group every week. I was in the  
24 plant a lot. I worked with the plant manager probably  
25 more than I worked in HR and, you know, if -- there

1       were issues. There were general issues.

2                       And, you know, I was not privileged to  
3       know exactly what any of the -- the individuals were  
4       told when they came to the joint venture. And as much  
5       as I heard what -- you know, generally what their  
6       issues were, their problems were, what they didn't like  
7       in general terms, you know, I hear the other that, you  
8       know, there wasn't any, you know, guarantees that A, B,  
9       C and D from the people that were around then.

10                      And so you got -- you know, what you  
11       try to do is just balance what the environment gives  
12       you and -- and all of that is on top of trying to take  
13       a noncompetitive business and make it competitive,  
14       which isn't -- isn't fun for most people.

15                      Q       Why didn't you -- when you found out  
16       people were upset about what they had been told versus  
17       what was happening with the changes in policies of the  
18       plant, why didn't you sit down with a group of them and  
19       go through Exhibit 2 and tell them which ones they  
20       could continue to get and which ones on this summary  
21       that you were going to change?

22                      A       I didn't do that. I don't know why  
23       during that time. I didn't feel that it was, you know,  
24       worthwhile to do that and, moreover, I didn't think  
25       what we were doing in running this business was at all

1       unreasonable, especially in light of what was going on  
2       at Ford Motor Company where they came from. It's like  
3       wow, you know, if -- you know, Ford is basically  
4       bankrupt and nobody's getting increases, nobody's  
5       getting, you know, bonuses and whatnot, then, Christ,  
6       we're still paying them.

7                       So I -- I guess I was tempered by the  
8       fact that our -- our circumstance was actually better  
9       than our customer's.

10               Q       But don't you think maybe the better  
11       approach was to meet with these individuals who you  
12       knew to be disgruntled and upset about specifically  
13       what they had been told in Exhibit 2, as opposed to  
14       saying in a meeting "I've got a stack of resumes" and  
15       in that same meeting say "You have a right to file a  
16       lawsuit"?

17                       MR. HUNTER: Objection to the form of  
18       the question and gross mischaracterization of  
19       what we spent the last 15 minutes on.

20       BY MR. SIMON:

21               Q       Mr. Sennish, do you regret saying that  
22       "I've got a stack of resumes" or do you regret telling  
23       people "You've got a right to file a lawsuit"?

24               A       No, I don't regret that because of the  
25       context in which it was said.

1                   Q           Do you think that you were provoking  
2           them in any sense?

3                   A           No, that absolutely not -- was not to  
4           provoke them. It was to try to reason with people that  
5           were running a business.

6                   Q           Let me show you another exhibit here,  
7           Exhibit 3.

8                               MR. HUNTER: Are we changing format?  
9                   Is this a good time for a break? It's been an  
10           hour.

11                              MR. SIMON: It's a good time.

12   (RECESS)

13           BY MR. SIMON:

14                   Q           Mr. Sennish, you understand you're  
15           still under oath, sir?

16                   A           That's correct.

17                   Q           All right. The meetings that we were  
18           talking at length about where you were talking about  
19           the speech you had given to the group of salaried  
20           people, are those called face-to-face meetings?

21                   A           That's what they are commonly known as.

22                   Q           Was there a face-to-face meeting  
23           previous to the one that you describe where the  
24           salaried employees said "It sounds like this meeting is  
25           being recorded" and they stormed out?

1                   A           I -- I simply don't remember that. I  
2           didn't go to every one of them, but I don't recall one  
3           that I was at that -- that that happened. I just don't  
4           -- don't remember it.

5                   Q           You're just not aware of any allegation  
6           by someone in the salaried workforce that there was a  
7           meeting held with HR people there and people believed  
8           that the meeting was being recorded? That doesn't ring  
9           a bell?

10                  A           In a face-to-face meeting?

11                  Q           Well, or --

12                  A           No. I -- I'd have --

13                  Q           Yes, face to face.

14                  A           No.

15                  Q           Any other meeting?

16                  A           Where somebody felt it was being  
17           recorded?

18                  Q           Well, do you record meetings?

19                  A           No.

20                  Q           Are you aware of any time where someone  
21           alleged that a group meeting was being recorded?

22                  A           No.

23                  Q           The meeting that you were talking about  
24           the speech that you had given, you had said that you  
25           didn't receive any verbal reactions from the group,

1 right?

2 A Not that I recall at this point.

3 Q Do you remember an employee named Kenny  
4 Workman who used to be in the plant?

5 A Yeah, I remember Mr. Workman.

6 Q Did Mr. Workman tell you to shut up  
7 during that meeting?

8 A Not that I recall.

9 Q You don't recall an exchange during  
10 that meeting where he said shut up and you said a few  
11 choice words to him? Does that ring a bell?

12 A No, I don't remember it.

13 Q You don't recall telling him "This is  
14 my meeting" and he's got not business telling you to  
15 shut up? That just doesn't ring a bell at all?

16 A I don't know that he ever told me to  
17 shut up, if he told me anything. I -- you know,  
18 there's so many of those meetings over the course of  
19 three years. I don't have any one of them -- every one  
20 of them chronicled as to who said what when, but I can  
21 remember having exchanges from time to time with  
22 people. But at that particular meeting did -- do I  
23 recall Ken Workman telling me to shut up? No, I don't  
24 remember that.

25 Q You don't remember any sort of exchange

1 with Mr. Workman at that meeting that we've been  
2 talking about?

3 A Not -- I just don't recall it, no.

4 Q Do you recall using profanity at that  
5 meeting?

6 A What would constitute profanity?

7 Q The word fuck.

8 A No, I don't think I said that.

9 Q Or shit. Did you say that word?

10 A Might have. Bullshit. That's -- you  
11 know, I don't know. I typically don't.

12 Q But did you direct any profanity to  
13 someone like Mr. Workman like "This is my fucking  
14 meeting. I don't have to take that shit." Did Mr.  
15 Workman use that language? Does any of that sound  
16 familiar?

17 MR. HUNTER: Objection. Asked,  
18 answered about five times.

19 THE WITNESS: No, I don't -- I  
20 specifically don't recall that.

21 MR. SIMON: Well, he's sort of hedged  
22 that he's not sure and so I want to make sure  
23 I'm giving him a chance to refresh his  
24 recollection.

25 THE WITNESS: Don't recall it.

1 BY MR. SIMON:

2 Q If Mr. Workman or someone else in the  
3 meeting says that happened, are they lying or is just  
4 the recollection different?

5 A I don't recall it.

6 Q Are they lying?

7 A Well, maybe he said it under his  
8 breath. I don't know.

9 Q But if they testified that you reacted  
10 to it and there was some sort of an exchange, are they  
11 lying or could it have happened?

12 A I'd have to say they'd be making that  
13 up.

14 Q Okay. Do you use profanity at these  
15 kind of meetings, Mr. Sennish?

16 A No.

17 Q I mean, do you take a kind of  
18 aggressive posture when you're dealing with the  
19 workforce in these meetings?

20 A With the workforce?

21 Q When you're meeting with a group of  
22 employees, like salaried employees, do you take an  
23 aggressive posture, let them know that you're in  
24 charge, that sort of thing? Is that sort of your



25 style?

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1 A It has --

2 MR. HUNTER: Objection to the form of  
3 the question. There are three questions there  
4 --

5 MR. SIMON: All right.

6 MR. HUNTER: -- most of which were  
7 relatively vague.

8 BY MR. SIMON:

9 Q Do you have an aggressive style in  
10 terms of your dealing with the workforce?

11 A As necessary.

12 Q With respect to the union, did you at  
13 one time call the Clermont County Sheriff and have the  
14 union committee men escorted out of the building?

15 A Well, I'd like to ask you where that  
16 came from because my answer is probably going to  
17 surprise you. I was in Detroit the day that happened,  
18 so, no.

19 Q Did you instruct somebody who was at  
20 the plant to see that that happened?

21 A We had an altercation in the plant that  
22 was brought to my attention when I was at a meeting in  
23 Dearborn and I said if the circumstance turns physical,  
24 that I would suggest that you have the sheriff on

25 notice if, in fact, you feel it's going to get

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1 physical. And that was the extent of it.

2 Q Did Mr. Newark, the plant manager, at  
3 some time tell the workforce that you had unfortunately  
4 overreacted to that situation?

5 A I don't know what he told the  
6 workforce. And whatever constitutes the workforce, I'm  
7 not sure what you mean, but that would have been a --  
8 an absolute misrepresentation.

9 Q We're ready for Exhibit 3, sir. I  
10 think you had a chance on the break to look at that; is  
11 that right?

12 A Not on the break. When we sat down, I  
13 started to look at it.

14 Q All right. Take as long as you need.  
15 I'm actually only going to ask you about one sentence  
16 in there, but take as long as you need.

17 A Go ahead. No. Go ahead.

18 Q Have you seen this document before?

19 A I've not seen Mr. Whisman's, but I have  
20 seen this before.

21 Q Fair to say it's a form letter that was  
22 given to other --

23 A Yes.

24 Q -- Ford transitionals? And you've seen  
25 them before today?

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1 A That's correct.

2 Q Do you see in the first paragraph where  
3 it has in parentheses summary attached?

4 A Yes.

5 Q Is it your understanding that what was  
6 Plaintiff's Exhibit 2, the summary, brochure that we  
7 had talked about before, is that what was attached to  
8 Mr. Whisman's letter, as far as you understand it?

9 A I don't know, but that is what I  
10 understood, yes.

11 Q Was that based on maybe conversations  
12 with Mr. Warden or do you know?

13 A I don't remember anymore. It just was  
14 to me a matter of fact that that would have been the  
15 appropriate document.

16 Q Okay. You have an AIP bonus for the  
17 salaried workforce at the plant?

18 A It's -- yeah, it's an annual incentive  
19 plan is what it is. Yes.

20 Q And currently how is that calculated  
21 for each employee?

22 A Well, depending on your band,  
23 administrative, general salaried, management,

24 supplemental role, there is a formula that is fairly --  
25 is standard and applies to each of the bands and then

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1 there's a percentage within each of the bands that  
2 determines how much money in that band is available,  
3 and it's pretty much without any intervention a  
4 straightforward calculation that determines an amount  
5 of money that's budgeted.

6 Q And the amount of money that an  
7 individual employee receives, is that based in any way  
8 on his or her performance?

9 A It -- it is today, yes.

10 Q Was there a time during your tenure  
11 there where performance was not a factor in determining  
12 the AIP bonus for an individual employee?

13 A Yeah, in the early years, couple years,  
14 that it was pretty much just formula-based and was paid  
15 out accordingly. There may have been an exception here  
16 and there, but basically it was just a formula-based  
17 payout based on our performance to objectives.

18 Q So like if we talk about the 2000 bonus  
19 for AIP, we would be talking about a bonus that is  
20 distributed in 2001 but reflects on the previous year  
21 of 2000?

22 A That's correct.

23 Q Like for -- you gave out 2002 bonuses  
24 this year, right?

25 A Yeah, they were payable March 15th of

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1 this year.

2 Q We're looking for Exhibit 21 here, Mr.  
3 Sennish. There it is. Pull that out of the stack.  
4 This is Exhibit 21. It says on the cover page Merit  
5 Planning and AIP, ZF Batavia, LLC, February 2001. Have  
6 you seen this set of documents before, Mr. Sennish?  
7 And I'm not going to ask you about every page, but feel  
8 free to familiarize yourself with it so I can ask you a  
9 couple questions.

10 A Yep, I've seen those.

11 Q And turning the page -- you'll see the  
12 little Bates stamped numbers on the corner. If you  
13 could turn to 625, it says annual incentive program in  
14 caps -- or, excuse me, large font. You have the right  
15 page.

16 It says at the bottom "All eligible  
17 employees will receive the AIP Award determined by the  
18 formula -- no adjustments for individual performance."  
19 Is that what it says there?

20 A Yes.

21 Q So for the AIP bonus for 2000 that was  
22 given out in 2001, this was a time that you described

23 where individual performance was not a factor?

24 A It was one of those years.

25 Q Turn to the next page if you could,

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1 626. It says 2000 AIP Award at the top and then it has  
2 a list of percentages broken down according to general  
3 job title as well as according to Ford transitional and  
4 ZF. You see those different percentages there, sir?

5 A Yes.

6 Q And you would agree with me that for  
7 each -- I'm calling it job title. What do you call the  
8 AC, GSR, is that job --

9 A Those are bands.

10 Q Bands. Thank you. For each job band  
11 you would agree that the Ford transitional percent  
12 that's listed is less than the ZF, right?

13 A Yes.

14 Q And so when it says ZF, it's comparing  
15 what a Ford transitional employee would receive, the  
16 AIP, as compared to a ZF Batavia new hire, right?

17 A That's correct.

18 Q Do you know why the percentages are  
19 lower for each of the bands for the Ford transitional?

20 A As -- as this -- this incentive piece  
21 of compensation applies, that I was told when I first

22 joined the company that this -- this was representative  
23 of a variable component of compensation to get a little  
24 more parity between the Ford transitionals and the ZF  
25 Batavia new hires.

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1 Q And so this 2000 and 2001 award was  
2 just a formula that was applied to get to the bonus,  
3 right?

4 A Yes, it is or was.

5 Q And regardless of what the individual  
6 Ford employee made or the ZFB new hire made, you  
7 applied these percentages to determine their AIP?

8 A That's correct.

9 Q And you were told, I think you said,  
10 right when you started that this was the plan with the  
11 AIPs, to use the AIPs to try equalize the total  
12 compensation for the ZF Batavia new hires and the Ford  
13 transitional?

14 A It was a component that would -- would  
15 bear that kind of influence on the compensation  
16 structure.

17 Q You can refer to Exhibit 2 if you want,  
18 or if you just know, but Exhibit 2 on the second page  
19 refers to the annual incentive plan. That's in the  
20 upper left column.

21 A Yes.

22 Q And obviously it doesn't say anything  
23 in there about Ford transitionals getting a lower  
24 percentage AIP award than ZF Batavia new hires. It  
25 doesn't say anything like that at all, does it, in that

85

1 sentence that you're looking at?

2 A No.

3 Q You agree with me?

4 A Yeah. It doesn't say anything about  
5 compared to Ford employees either.

6 Q Do you think that Ford transitional  
7 employees should have been told before they came over  
8 that the AIP award is going to be distributed  
9 differently depending on whether you're a Ford  
10 transitional or a ZF Batavia new hire?

11 MR. HUNTER: Objection.

12 THE WITNESS: I --

13 MR. HUNTER: You can answer.

14 THE WITNESS: I -- I don't know that  
15 they weren't. I don't know. To -- to me it  
16 was a matter of fact as to here's how it's  
17 structured. So --

18 BY MR. SIMON:

19 Q Given that it was a matter of fact to  
20 you -- and you assume it was told to the Ford



21 transitionals before they came over?

22 MR. HUNTER: I'm sorry. Assume what  
23 was told to the Ford transitionals?

24 MR. SIMON: What we were just talking  
25 about.

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1 BY MR. SIMON:

2 Q Do you assume that the Ford  
3 transitionals were told before they came over to ZF  
4 Batavia that there would be this different structure  
5 regarding the AIP for Ford transitionals versus ZF  
6 Batavia?

7 MR. HUNTER: Objection. Asked and  
8 answered. He testified he didn't know if they  
9 were told that or not.

10 BY MR. SIMON:

11 Q Did you think they were?

12                   A           I never even thought about it. I don't  
13       know what they were told.

14 Q In fairness, Mr. Sennish, do you think  
15 they should have been told? I'm asking for your  
16 opinion.

17                   A           My opinion?  If there -- if there was a  
18           distinction of that sort and it was relevant to  
19           whatever the discussion was at the time, I think I  
20           would have probably communicated that.

21                   Q           I mean, if there was a discussion about  
22           the Ford transitionals in '99, we've got this AIP plan,  
23           if it was you who was telling them, you would have said  
24           "Understand that there's going to be this different  
25           structure for whether you're a Ford transitional or a

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1           ZF Batavia new hire when we determine the percentages  
2           of your compensation to get the AIP bonus," right?

3                   A           Yeah. I -- I think -- you know,  
4           certainly just looking at it from the outside, well,  
5           yeah, they probably would have communicated that. But  
6           I don't -- you know, when you look at the whole scope  
7           of what the communication was, was that -- was that a  
8           relevant piece of it? Was there an expectation that  
9           there was going to be absolute parity?

10                   I -- I don't know what the  
11           circumstances were, but just being reasonable, if there  
12           was some distinction built in for a reason, I might  
13           have communicated it.

14                   Q           I appreciate that. We're done with  
15           that one. You can turn Exhibit 21 over. I don't think  
16           I need to show you this exhibit, but do you know who  
17           Julie Hallauer was?

18                   A           Hallauer? Yes.

19                   Q           That's H-A-L-L-A-U-E-R, right?

20 A That's right.

21 Q She was a Ford transitional employee,  
22 right?

23 A As far as I know, yes.

24 Q And she was director of CVT programs  
25 while she was at the plant?

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1 A That was her title.

2 Q And then in early 2001 she went back to  
3 Ford at a different plant?

4 A I don't know where she went, but she  
5 went back to Ford.

6 Q My question is: Is that an opportunity  
7 that all the Ford transitional employees have, to go  
8 back to Ford, or was this a unique situation with Ms.  
9 Hallauer?

10 A I -- I can honestly report I have no  
11 idea how that happened. That was -- that was outside  
12 of our sphere and it happened.

13 Q No one ever told you what the story  
14 there was?

15 A No.

16 Q What is your general understanding of  
17 whether a Ford transitional employee who's, I guess in  
18 your words, unhappy at the plant, what's the  
19 opportunity to go back to Ford?

20                   A           I -- my understanding is that there  
21           isn't any opportunity to go back to Ford. Now, I don't  
22           know, you know, if something were to go let's just use  
23           the term belly up at the JV, I don't know what kind of  
24           arrangement there is between Ford and the transitions,  
25           but under normal operating conditions my awareness is

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1           that it's a one-way decision.

2                   Q           Given your awareness about that, did  
3           you ask anybody why it is Julie Hallauer had a  
4           different arrangement?

5                   A           Well, there was only speculation in --  
6           within Batavia as to well, how did that happen? No --  
7           there just -- nobody was a party to it. I don't know  
8           what her transition agreement included, whether it had  
9           something different or not. I just -- she just went  
10          back to Ford.

11                  Q           And you didn't ask anybody?

12                  A           Not that I recall.

13                  Q           Staying on the AIP plan then, at some  
14          point after 2001 -- when the 2000 AIP plan was  
15          distributed, at some point then there was a change with  
16          the AIP to consider job performance?

17                  A           That's correct.

18                  Q           Did that start in 2001 going forward to

19 2002, do you recall?

20 A That seems about right.

21 Q In 2002 were certain individuals in the  
22 salaried workforce, did they have a lower AIP bonus  
23 because they worked too much overtime?

24 A Well, I think a -- a bit of background  
25 will help clarify. We -- we -- in the early stages had

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1 a re-performance review process called the success  
2 profile which was fairly -- was exclusively behavioral  
3 based. And over time we developed this performance  
4 review planning and development process which was --  
5 weighted behavior lighter than performance to  
6 objectives.

7 And so once that was introduced, then  
8 we had a -- a -- a very structured, very focused  
9 performance review that measured behavior, I believe,  
10 30 percent and performance to objective 70 percent and  
11 then did a weighted average that we now had hard  
12 criteria by which to make judgments in terms of  
13 compensation and -- and incentive pay.

14 And so, yeah, there was a point where  
15 once that was in play, that performance review, that we  
16 began to -- to scrutinize compensation treatment  
17 consistent with performance.

18 Q And what role, if any, did overtime

19 play in the distribution of AIP 2001 bonuses?

20 A There -- there was a collection of data  
21 that represented individuals and the aggregate dollars  
22 that they earned in overtime and it was compared  
23 generally speaking to their performance. And where the  
24 performance was not consistent with the -- the overtime  
25 worked -- and I would explain that by if -- if somebody

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1 is working 50 percent overtime of their straight time  
2 hours and their performance is rather low, there --  
3 there is in a -- you know, in a readout from that that  
4 would indicate that perhaps their -- their performance,  
5 you know, was such that we should mitigate some of the  
6 overtime that they were paid, where you're working a  
7 lot of hours, yet not -- not meeting objectives to the  
8 extent that we felt was appropriate. And the  
9 individual managers had a general guideline where they  
10 were to factor that in.

11 Now, some people who worked a lot of  
12 overtime and were assessed at a very high level of  
13 performance, I believe that there wasn't any negative  
14 impact on their -- their incentive pay. So that's  
15 basically what the instructions were, to do an analysis  
16 to make a determination.

17 Q When the AIP bonus are distributed,

18 does the supervisor speak to the individual and explain  
19 the bonus to them? Is that typical?

20 A I can only say that they -- they are  
21 instructed to do that and they should be doing that.

22 Q Okay. During those kind of meetings  
23 would it be appropriate for the supervisor to say to  
24 the salaried employee "You worked a lot of overtime  
25 last year, so your AIP bonus has been reduced

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1 accordingly"?

2 A I would expect that anybody who was  
3 impacted positively or negatively or neutral, that  
4 there would have been an explanation associated with  
5 the payout.

6 Q So there are a group of salaried  
7 employees, to your understanding, who received a lower  
8 AIP bonus because they worked a lot of overtime and  
9 were not a top performer?

10 A Yeah, that was the -- the basis.

11 Q And for those employees it would have  
12 been appropriate for their supervisor to say "This is  
13 why you're getting a lower bonus"?

14 A I would expect that, yes.

15 Q Did you expect that anyone might have a  
16 negative reaction if they're told I'm getting a lower  
17 bonus because I was in the plant on the weekends too

18 much and working too much overtime?

19 A If that was how it was explained to  
20 them, I would expect there would be a negative  
21 response.

22 Q Would it be a justified negative  
23 response?

24 A In that person's mind I think they  
25 would justify it, yeah.

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1 Q Do you think it would be justified?

2 A Well, it depends. I think that there  
3 are a number of under-performers in our plant, so I  
4 wouldn't think it's justified for an under-performer to  
5 be upset about that.

6 Q But if they were told "The reason  
7 you're getting the AIP bonus is because you worked too  
8 much overtime," wouldn't they be justified in your mind  
9 being upset about that?

10 A I said that -- that explanation would  
11 upset me if I was that individual.

12 Q And isn't it true that certain people  
13 were told that, to your understanding?

14 A I don't know that. Perhaps they were.  
15 I wouldn't know.

16 Q Did anyone complain to you that "Len,



17 my supervisor said I got a lower AIP bonus because I  
18 worked too much overtime"? Did you receive any of  
19 those kind of complaints?

20 A Did I personally? No.

21 Q Did anyone tell you that those  
22 complaints were lingering in the plant?

23 A That there were complaints, yes, and  
24 that the individual managers, the -- the same -- the  
25 people that are at director level, plant manager, were

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1 -- were handling those because the decision was made by  
2 that individual based on whatever algorithm they put  
3 together to -- to do that relationship.

4 Q I just want to try to understand. If  
5 you receive a report back that supervisors are telling  
6 employees that "Your AIP bonus is lower because you  
7 worked too much overtime," wouldn't you have wanted to  
8 try to correct the situation and let people know?

9 A But I didn't -- I didn't hear anybody  
10 say that it was just -- "They just told me I'm working  
11 so much overtime I can't give you this bonus." I  
12 didn't have any one individual that I recall come up  
13 and tell me that that's all they told me. Because if  
14 they had, I would have gotten personally involved and  
15 found out what the real rationale was, if there was  
16 some other rationale.

17 Q On this overtime issue, were the  
18 managers of those departments that had too much  
19 overtime, were their AIP bonuses reduced?

20 A I would have to go back and look. But  
21 that would have been -- the -- the application of that  
22 guideline would have applied to people in management  
23 role positions. I guess we're talking about operations  
24 mainly. Yeah, that would have -- should have been the  
25 case. I just don't recall.

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1 Q Even if the manager was high  
2 performing, if he or she's running department where  
3 there's too much overtime in your judgment or the  
4 judgment of the management, that person, based on the  
5 guidelines, should have received a lower AIP bonus?

6 A That was the -- the direction, that was  
7 the -- the plan and there should, in my -- in my  
8 recollection, have been some people at that level  
9 impacted.

10 Q What's the current policy, Mr. Sennish,  
11 regarding the salaried employees' requirement to check  
12 in and check out of the plant when they enter and exit?

13 A Just exactly what I do every day. I  
14 engage a reader when I come into the building and  
15 anytime I leave or re-enter, I engage a reader so my

16 presence is documented or my absence is documented.

17 Q Was there a period in time where you  
18 weren't doing that after you were hired at ZF Batavia?

19 MR. HUNTER: You mean Mr. Sennish  
20 personally?

21 MR. SIMON: Yes. Strike that.

22 BY MR. SIMON:

23 Q Did you do that practice the whole time  
24 since your start at ZF Batavia?

25 A Personally?

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1 Q Yes.

2 A No. I think in the early months, first  
3 year and a half, two years, whatever, that when I left  
4 the building, I -- I didn't engage a reader unless  
5 there was a door that had a reader that -- that engaged  
6 it.

7 Q Let me show you Exhibit 16, Mr.  
8 Sennish. It's got your name at the bottom. The  
9 question is: Have you seen it before? I'll give you  
10 as long as you need to familiarize yourself with it.

11 A Yep, this is a document that I put  
12 together.

13 Q I think we have a different copy where  
14 it's the just the notice, but was this sent out to the  
15 workforce through that e-mail from Glenda Flippin,

16 August 29, 2001?

17 A That would have been one form of  
18 issuance.

19 Q But that's the date the notice was put  
20 out ultimately, right, according to this document?

21 A Yeah, it should have been.

22 Q And is that when you started beginning  
23 doing the check-in and checkout with the electronic  
24 card or --

25 A Yeah, I think the -- we had done --

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1 positioned readers so that virtually every entrance was  
2 ingress and egress.

3 Q So following this, the salaried  
4 employees have to use the card system going in and  
5 going out of the plant, right?

6 A That's correct.

7 Q And the hourlies only have to do it  
8 going on, right?

9 A That's correct.

10 Q Why are the hourlies allowed to do it  
11 whereas the salaried are required to check in and check  
12 out?

13 A The -- the distinction is not one of a  
14 contractual nature but of a Ford policy, that Ford

15 throughout the United States employs a -- an honor  
16 system where readers are not utilized in any of their  
17 plants and ingress and egress is pretty much, you know,  
18 as you come in and as you leave.

19 And ZF as a company does not employ  
20 that policy in its plants. So ZF, being that the  
21 management entity of the business decided that we  
22 wanted, number one, to have controls of time -- for  
23 timekeeping purposes for hourly employees, which we  
24 still have not employed, and that when we -- we got the  
25 guidelines for the benefits of designating a foreign

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1 trade zone, the guidelines were utterly clear that any  
2 individual on the premises that constituted the foreign  
3 trade zone was required to have some documentation of  
4 their ingress into the facility. Egress was a -- a  
5 separate, not referenced component of the foreign trade  
6 zone.

7 So insofar as the majority of our  
8 hourly employees were and are Ford employees, we  
9 contacted Ford relative to the foreign trade zone and  
10 identified that it was our preference to have all  
11 employees for security reasons, for foreign trade zone  
12 reasons, for -- for getting some -- our hands around  
13 timekeeping and people coming and going, that we would  
14 like to do this.

15                               And Ford -- the feedback from Ford  
16       Motor Company was that they are on an honor system,  
17       they understand the requirement for ingress but do not  
18       support our request to have hourly employees that are  
19       employees of Ford Motor Company engage a reader when  
20       they're leaving the facility.

21                               So because we have a mixed group of  
22       employees in the bargaining unit, we did not require  
23       then any hourly employees to hit a reader when they  
24       leave the facility. For salaried it was our -- our  
25       decision that we would have all salaried employees

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1       enter and exit and in so doing engage a reader.

2                       Q           I think you said that the exiting part  
3       of it or the egress part of it is not a requirement of  
4       the foreign trade zone?

5                       A           That's what I said.

6                       Q           So why do you have the salaried people  
7       hit the card on the way out?

8                       A           Because the company has decided that  
9       that's one of the things we wanted to do in terms of  
10      security and -- and basically maintaining some control  
11      over people's presence and absence in the building.

12                      Q           Do you see the last paragraph of the  
13      notice in front of you? It's the last full paragraph.

14 A Yes.

15 Q I'll just read it. You tell me if I've  
16 read it right. "Please be advised that salaried time  
17 sheets will be audited against Honeywell system  
18 readouts. Your manager will be asked to clarify  
19 notable differences between them, and pay adjustments  
20 are a possibility if no justification is forthcoming."  
21 I read that correct, Mr. Sennish?

22 A Yes, I heard it correct.

23 Q Okay. Is it fair to say that that was  
24 a reason for having the salaried people check in and  
25 check out of the plant is that you wanted to check that

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1 against their time sheets to make sure they were in the  
2 building when they said they were for purpose of pay?

3 A For purposes of pay or for purposes of  
4 identifying when they were here and when they weren't.  
5 I think it's more of the -- the latter. And if I can  
6 explain.

7 Q Sure.

8 A I -- there's probably quite a bit of  
9 documentation that would indicate that we have  
10 circumstances in the factory, for one, that hourly  
11 employees are scheduled to work overtime on daily, for  
12 example, midnight to 4:00 a.m. or whatever, and the  
13 supervisor is not in the building. And we had a bit of

14 a problem with that.

15 And so when you -- the honor system in  
16 the Batavia facility was fraught with problems, and  
17 that being one what we considered major example of  
18 that, that there was a question of whether or not  
19 people were really in the building when they were  
20 indicating they -- on their time sheets that they were.

21 And so this was one of those check-and-  
22 balance-type procedures that we instituted to help rein  
23 in those problems and -- and -- and make salaried  
24 people more accountable for their presence in the  
25 building.

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1 Q And it indicates in the notice that if  
2 you line up their time sheets with the electronic card  
3 readout and there's notable differences, adjustments  
4 could be made to their pay, right?

5 A That's what it says.

6 Q So, for example, if somebody comes in  
7 to work on Monday their regular hours, according to  
8 their time sheet they worked 7:00 to 5:00, but  
9 according to the readout they worked 7:00 to 4:00, you  
10 would expect there would be an adjustment to their pay,  
11 right?

12 A No. We never -- we just never did it.



13 Q Did you not do it because you kind of  
14 set a deterrent here by sending this notice that we're  
15 going to look?

16 A That was pretty much what we did.

17 Q But if somebody said they worked eight  
18 hours on the time sheet for a given Monday and it turns  
19 out on the electronic readout they only worked seven  
20 hours, if that had happened, you would have seen that  
21 there was an adjustment to their pay, right?

22 A Well, as a -- for nonexempt salaried  
23 employees, we would have made an adjustment for --

24 Q This notice was given to exempt  
25 employees, sir.

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1 A Well, I know. I'm just answering the  
2 question. So for exempt employees, if it was  
3 appropriate under the Fair Labor Standards Act, we  
4 would have made an adjustment.

5 Q Well, what's your understanding as we  
6 sit here today?

7 A I doubt whether we would have made an  
8 adjustment in pay for a one-hour discrepancy.

9 Q How about a two-hour discrepancy?

10 A I don't think we would have done it  
11 there either.

12 Q What kind of discrepancy were you

13 looking for?

14 A We weren't looking. We've never  
15 looked.

16 Q You never looked at the time sheets and  
17 the electronic card readouts after sending out this  
18 notice?

19 A Not that I recall.

20 Q Is there an employee named Victor  
21 Flanagan that used to work there?

22 A Yeah.

23 Q Did he get fired?

24 A Yes, he did.

25 Q Did he get fired because his time cards

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1 didn't match the electronic card readout?

2 A Ultimately, yeah.

3 Q And that was after this notice was  
4 distributed?

5 A It should have been, yeah.

6 Q So somebody checked?

7 A No. Somebody observed and then  
8 somebody checked.

9 Q What about is there a man named Ronald  
10 or Reynard South that used to work there?

11 A Yes.

12 Q And he doesn't work there anymore,  
13 right?

14 A I believe he voluntarily quit.

15 Q Did you tell Chuck Hukan that -- well,  
16 Chuck Hukan was his supervisor?

17 A Chuck Hukan?

18 Q I'm sorry. Yes.

19 A I -- yeah, he probably was at one time.

20 Q Did you tell Mr. Hukan to monitor Mr.  
21 South because you believed that he was putting down  
22 time on his time sheet that didn't reflect the actual  
23 time he was in the plant?

24 A I seem to recall having that discussion  
25 with Mr. Hukan, but it was, again, based on people's

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1 observation that Mr. South was out of the building a  
2 lot. So I asked Mr. Hukan to watch that, as if he  
3 didn't know.

4 Q But he also didn't just have to observe  
5 it; he could go and take the time cards and line them  
6 up with the electronic card readout, right?

7 A Anybody could have, yeah. Well, I  
8 mean, anybody that had access to it would have -- could  
9 have done that.

10 Q And you would have expected Mr. Hukan  
11 to do that?

12                   A           No. I told him to watch Mr. South and  
13                   see if he is, indeed, leaving the building during  
14                   working hours.

15                   Q           Did you look at the time cards and  
16                   electronic card readout for Mr. South?

17                   A           On a -- in terms of the Honeywell  
18                   system or his time cards?

19                   Q           Did you check the electronic card  
20                   readout or his time sheets to see that they lined up so  
21                   that --

22                   A           No, I never compared the electronic  
23                   readout with his time sheet.

24                   Q           Well, when it says here "Please be  
25                   advised that salaried time sheets will be audited

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1                   against Honeywell system readouts," were you telling  
2                   the truth?

3                   A           Well, it depends. We've never had any  
4                   plan that we were going to have a systematic audit of  
5                   time sheets. Now, again, somebody may decide that I  
6                   got a question, so I'm going to audit. But we never,  
7                   ever had any plan that, okay, let's sit down every week  
8                   and see who we can catch that -- because of Fair Labor  
9                   Standards Act just made that kind of a waste of time.

10                   Q           So you didn't systematically do this

11 audit, but on various occasions individual salaried  
12 employees who were exempt were audited?

13 A May have been.

14 Q Well, certainly Victor Flanagan is one?

15 A After it was observed, physically  
16 observed that Mr. Flanagan was out of the building and  
17 every semi-monthly period was reporting that he was  
18 here, I think that the individuals that were  
19 incredulous about that went and looked and it was the  
20 verification point confirming what they saw.

21 Q All right. Did anyone ever audit the  
22 system readouts versus the time sheets for Dave  
23 Osborne?

24 A I don't know. That's -- that's a  
25 possibility.

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1 Q Is Dave Osborne exempt?

2 A Yes, he is. He's a maintenance group  
3 leader.

4 Q Are you aware of any concern that his  
5 time sheets aren't fairly reflecting his actual time in  
6 the plant?

7 A No, I've never heard that about Mr.  
8 Osborne.

9 Q Do you know who Kevin O'Hagan is?

10 A Yes.

11 Q He's exempt?

12 A Yes, he is.

13 Q Was his pay ever docked because his  
14 time sheet didn't line up with his electronic card  
15 readout?

16 A Not to my knowledge.

17 Q But, I guess, overall after you sent  
18 out this notice, it had the effect that you wanted,  
19 that people were putting down the time that they were  
20 actually in the plant?

21 A I believe it did because I was just not  
22 aware other than Mr. Flanagan, for example, and maybe a  
23 few others that generally we felt comfortable that we  
24 had better checks and balances in the process.

25 Q And you think it helped that you sent

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1 this notice where you told them "We may audit the  
2 readouts versus the cards and if there's a notable  
3 difference, adjustments might be made to your pay,"  
4 right?

5 A I don't think we would have done it for  
6 any other reason than we thought it would have an  
7 impact on a certain segment of the workforce.

8 Q But you had concerns about the Fair  
9 Labor Standards Act that you were so closely monitoring

10 the time sheets and exempt employees? Did you have  
11 those concerns?

12 A Well, that's why we didn't do them.

13 Q Well, you didn't do it systematically?

14 A Right.

15 Q On occasion you did look at the time  
16 sheets and the readouts; there's no question about  
17 that?

18 A I never looked at a readout, any time  
19 sheet personally ever.

20 Q But other people did?

21 A May have.

22 Q Well, not to beat a dead horse, Mr.  
23 Sennish, but we know that somebody did with Victor  
24 Flanagan, right?

25 A Well, that's what I said, yeah. I

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1 mean, other people -- it's for the record that somebody  
2 went back and confirmed their observation. But there  
3 was not a wholesale "Hey, give me the printout. Give  
4 me the printout. I want to check it against this."  
5 There just -- it was not like that. It was a rare  
6 exception if --

7 Q Do you think the Ford transitional  
8 employees are treated negatively in any way as compared  
9 to the ZFB new hires?

10 A Not that I have ever noticed.

11 Q Do you think that a disproportionate  
12 amount of Ford transitional employees have been either  
13 fired or forced out of the plant?

14 A I don't believe so.

15 Q Is there an Ann Jones that used to work  
16 in the office there?

17 A Yeah. She worked in human resources.

18 Q She was a Ford transitional?

19 A No.

20 Q She was not?

21 A Nope.

22 Q Well, was she a ZFB new hire?

23 A Yep.

24 Q You say that authoritatively. Are you  
25 sure?

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1 A She retired from Ford and was hired by  
2 ZF. She is not a transition.

3 Q I understand. She retired from Ford at  
4 the time of the transition?

5 A She must have before -- before I came.

6 Q Well, I mean --

7 A She retired from Ford and hired on with  
8 the joint venture.



9 Q Okay. Well, you know who Bill DeVito  
10 is, right?

11 A Yes.

12 Q Didn't he retire from Ford and join the  
13 new venture?

14 A I don't know. I can't recall whether  
15 he was --

16 Q So I understand your terminology, if he  
17 did, you wouldn't consider him a Ford transitional?

18 A No, because he didn't get one of those  
19 letters.

20 Q That's your understanding? If you  
21 retired from Ford and then joined ZF Batavia, you  
22 didn't get the letter that Mr. Whisman got?

23 A Yeah.

24 Q Well, Ms. Jones, she's still at ZF  
25 Batavia?

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1 A No.

2 Q Did she quit?

3 A Yeah, she resigned.

4 Q Was it kind of a resignation before she  
5 was fired?

6 A Before she was fired? She was not  
7 fired.

8 Q Well, people resign sometimes in

9 anticipation of a termination. Is that a fair  
10 characterization?

11 A No. Her husband -- you can read it in  
12 the papers -- is extraordinarily ill and she got to the  
13 point where she couldn't take care of him and come to  
14 work, so we gave her a separation package and it was  
15 mutually satisfactory and she's very happy.

16 Q Peggy Jameson, was she somebody that  
17 worked in the office?

18 A Yes.

19 Q Ford transitional?

20 A Yes.

21 Q And she was fired?

22 A Yeah, she was released.

23 Q Cindy Clousson, do you know Cindy?

24 A Yes.

25 Q She was a Ford transitional employee?

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1 A Yes, she was.

2 Q She also was involuntarily terminated?

3 A She took a separation agreement.

4 Q You agree with my statement?

5 A I don't know that I necessarily  
6 consider it involuntary.

7 Q Well, did the company approach her

8 about separating her employment?

9 A Yeah. She had an extended period of  
10 absence at the end of which we weren't sure whether or  
11 not she was going to be capable of doing her job and we  
12 mutually worked out a separation. The same with Ms.  
13 Jameson.

14 Q In terms of your managers, is there a  
15 gentleman by the name of Bob Jones there?

16 A Yes.

17 Q Ford transitional?

18 A As I understand, yes, he is.

19 Q Has he been demoted over the years?

20 A Not -- not in terms of his salary or  
21 his status as a management role employee, no.

22 Q Has he been demoted then and received  
23 lesser job responsibilities at some point?

24 A I -- I think that's a matter of an  
25 individual's interpretation. But, yeah, I -- I believe

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1 Bob was an area manager of -- of -- I don't remember  
2 which area anymore, when the JV started. And he  
3 ultimately ended up with the same management role  
4 status and -- and salary status and was converted to a  
5 -- like a productivity manager for an area of the  
6 plant.

7 Q You didn't consider that a demotion?

8                   A           I -- not in what you would consider the  
9                   traditional hard terms, but I guess on a soft side Mr.  
10                  Jones might conclude that he got demoted, but I don't  
11                  know.

12                  Q           Dave Hapner was a Ford transitional  
13                  employee?

14                  A           I'm not sure. I think -- I'm not sure,  
15                  but I think Mr. Hapner retired and joined the JV. I'm  
16                  not sure though. I'd have to go look.

17                  Q           In any case, he was involuntarily  
18                  terminated, right?

19                  A           Yes, he was.

20                  Q           Gene Gilliam was a Ford transitional  
21                  employee?

22                  A           Yes.

23                  Q           He was involuntarily terminated?

24                  A           Now, Gene took his Ford retirement. So  
25                  I -- I'd have to go look at the record, but I know Gene

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1                  did take his retirement from Ford, which, in order to  
2                  do that, you have to retire from Ford, and then I  
3                  believe he joined the JV as what would be considered,  
4                  like Ms. Jones, a new hire ZF Batavia employee.

5                  Q           Dan Purdy worked in purchasing?

6                  A           Yes.

7 Q He was a Ford transitional?

8 A Yes.

9 Q And he was involuntarily terminated?

10 A Yes.

11 Q And kind of considering all these  
12 people and putting together some Ford transitionals and  
13 people were with Ford but actually retired and joined  
14 ZF Batavia new hire, do you think there's a  
15 disproportionate amount of those employees that have  
16 been let go since 1999?

17 A I'd go back and do some figuring, but  
18 like I told you at the beginning, there were a number  
19 of people that came to the JV that were not good  
20 employees and I think that's a fair reflection of them.  
21 And I guess if there's 60 transition people and there's  
22 300 overall employees, that if somebody sat down and  
23 did the numbers, it might be a little bit skewed in  
24 that direction.

25 Q Skewed in the direction of --

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1 A Of -- in -- in -- I guess  
2 disproportionate number of Ford transitions or Ford  
3 retirees and hires.

4 Q Do you think that might be because  
5 somebody like Dave Adams kind of has a bias against  
6 employees that have been in the Ford system a long

7 time?

8 A No.

9 Q Mr. Adams has on occasion said things  
10 negative about the Ford way of doing business?

11 A Absolutely. We work for a different  
12 company. I mean, your own company always does things  
13 right, you know, right or wrong, you know.

14 Q But, I mean, has he said or Mr. Newark  
15 said we need to get the Ford influence off the plant  
16 floor?

17 A Absolutely. Just like American Axle,  
18 got to get the GM influence out of here. There's no  
19 doubt that that -- the operating practices in that  
20 plant, if everybody is honest, were -- were not very  
21 good and we had to get that operating pattern out of  
22 the factory, we had to go lean, we had to get out of  
23 mass production, yeah, absolutely. We were a mass  
24 production plant. Continuous improvement doesn't  
25 happen there very well.

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1 Q Well, if you're trying to get the Ford  
2 influence off the plant, I mean, it just makes logical  
3 sense if you've got positions to fill, you're not going  
4 to fill them with people who worked in Ford for a long  
5 time; you're going to want to hire some new people off

6 the street, aren't you?

7 A We -- most of our positions in the  
8 beginning were filled by Ford employees and ultimately  
9 we had openings and we hired a lot of new people.

10 Q But if you want to get the Ford  
11 influence off the floor, wouldn't you rather have a ZF  
12 Batavia new hire doing that person's job as opposed to  
13 a Ford transitional or a Ford retiree?

14 A No. One thing that I do subscribe to  
15 is that the continuity of that business, as -- as bad  
16 as it was, it could have got worse. And one of the  
17 reasons it didn't get worse is because we had  
18 continuity from the Ford plant to the JV and that was  
19 only borne out by having a considerable number of Ford  
20 employees there.

21 So they were necessary and they did  
22 maintain the continuity. And the expectation would be  
23 that when they came to the JV, it ain't Ford anymore  
24 and that we were going to run the business differently,  
25 that the sign said ZF, not Ford, and that transitioning

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1 out of mass to lean production was not unreasonable.

2 And Ford did try to do that themselves  
3 in the years past to no avail, and our -- our focus was  
4 the same thing, that we wanted to run the plant  
5 differently. But why wouldn't the Ford person

6 accommodate himself or herself to that as opposed to an  
7 outsider is a matter of personal choice.

8 Q I think what you were saying there is  
9 there was a transition period where you say roughly  
10 from two to three years after the joint venture was  
11 started where you needed to keep the operation running,  
12 you needed to get the CD4Es out the door and in that  
13 vein you did rely heavily on the Ford transitional  
14 employees who had the experience?

15 A Absolutely for the first year.

16 Q And is there a period where maybe you  
17 got beyond that transition where you could start really  
18 looking forward to the CVT and beyond the transition  
19 period where you're just keeping it running? I mean,  
20 how long did that transition period last that we're  
21 talking about, one, two years?

22 A I -- I mean, there's -- there's people  
23 that have 25, 35 years experience that you just can't  
24 dismiss that are still there that are Ford transition  
25 and their experience is still beneficial, you know.

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1 There -- there are -- there are ways to  
2 get things done that they're aware of. They understand  
3 the equipment, they've lived with it its entire life  
4 and there is -- there is absolutely a benefit to it and



5 concomitant with that is the -- the transition from a  
6 mass production environment where everybody has to be  
7 on board.

8 But, yeah, the design of the JV was to  
9 build out the existing product and transition to CVT.  
10 And as we sit here today, that's a horse of a different  
11 color from that plant.

12 Q The Ford transitionals' experience is  
13 primarily doing the CD4E?

14 A Yeah. And before that the ATX. But,  
15 yeah, that -- the -- the equipment and product in the  
16 plant was there under Ford and it's still there today,  
17 virtually the same equipment, although it's been --  
18 there's a different version of the -- the CD4E, but  
19 fundamentally it's the same product.

20 Q But with the CVT I guess you're in the  
21 preproduction phase right now?

22 A CVT, yes.

23 Q And a lot of those positions are being  
24 filled by ZF Batavia new hires?

25 A Yeah.

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1 Q Do you know of any Ford transitional  
2 employees who are in the CVT area? And I'm including  
3 Ford retirees.

4 A Yeah, there's a department manager, Joy

5 Giddings. I believe one of the maintenance group  
6 leaders is a former Ford employee.

7 Q Are you talking about Hassan Saleh?

8 A No. Ed Aris? Well, I never thought  
9 about it. I just don't -- I -- I guess if I had the  
10 roster in front of me, I could identify -- half -- half  
11 of the hourly employees in there are Ford employees.

12 Q Aren't there still a lot of salaried  
13 employees who are employed by Ford?

14 A In -- in ZF Batavia --

15 Q Yes.

16 A -- that are employees of Ford?

17 Q Yes.

18 A There is one. Adam Vahratian is our  
19 CVT programs director, who is technically the only on-  
20 roll Ford salaried employee in the company. And then  
21 there are Ford resident engineers that if we were still  
22 a Ford plant that would be in the building courtesy of  
23 the automatic transmission organization of Ford, that  
24 they -- they assigned from the -- you know, the  
25 divisional office, resident engineers. And there's

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1 five or six of those type people still in the building,  
2 but they are not on our rolls.

3 Q Is it your understanding when people

4 joined the joint venture from Ford in 1999 that they  
5 were told that ultimately you can't stay here and be a  
6 Ford employee? Is that what your understanding was?

7 A They all --

8 Q They're given a choice, either join ZF  
9 Batavia and become a ZF Batavia employee or look  
10 elsewhere for a job within Ford?

11 A Yeah, that's what I understood and  
12 that's what -- that's what certainly happened during my  
13 tenure.

14 Q We'll just go through some names here.  
15 Is there a person named Penny Bradboy who works there?

16 A Bradboy?

17 Q Yes.

18 A Not anymore.

19 Q She left recently?

20 A Every -- every -- every Ford salaried  
21 employee, I believe, left the facility at the end of  
22 2001.

23 Q That would include Ms. Bradboy?

24 A I believe. Whatever the -- that  
25 approximate timing, yes.

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1 Q What about John Middleton?

2 A John Middleton? I don't recall. He's  
3 not here today.

4 Q Did Tom Farris retire?

5 A Yeah, he retired the first of the year.

6 Q Ed Zix?

7 A Ed Zix is one of the ATL Ford

8 residents. He's not on roll.

9 Q Was he somebody that was there in the  
10 plant in 1999 as a Ford employee?

11 A He's been there as a long as I've been  
12 there.

13 Q You're saying that the resident  
14 engineers you've --

15 A They're Ford employees, but they've  
16 never been on the Batavia plant rolls. They're  
17 assigned out of the -- the -- the divisional automatic  
18 transmission office.

19 Q Mike Conners?

20 A Same thing as Mr. Zix.

21 Q Mike Morfino?

22 A Mike Morfino was in a group of Ford  
23 employees that were called 30 and three. And what that  
24 meant is that Mr. Morfino was going to be eligible to  
25 retire within the window that was established for all

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1 Ford salaried employees to either join the JV or leave.

2 But if you were eligible to retire by that window

3 closing, you could stay a Ford employee up to that  
4 point, then you had to retire and had to join the JV.  
5 And if you didn't retire, then you would have gone back  
6 to Ford; you would not have stayed at the JV.

7 Q So what did he choose?

8 A He -- well, he chose to retire from  
9 Ford and join the JV.

10 Q So he's an employee of ZF Batavia?

11 A Yes, he is. Morfino is.

12 Q And different than some of the other  
13 Ford transitionals, he became a ZF Batavia employee  
14 sometime after 1999?

15 A Yeah. There were a pre-designated  
16 group that fell into that eligible-to-retire window and  
17 they were at the onset identified as 30 and threes.  
18 You get 30 years in this window and then you commit to  
19 stay with the JV for at least three years thereafter.

20 Q Okay. Mike Kelly?

21 A Mike Kelly, I believe, was in that  
22 group and he retired and he did not stay with the JV.  
23 He may -- he -- he was ill and I believe he retired and  
24 just retired.

25 Q Jim Bellman?

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1 A I'm not sure what Jim's -- I'd have to  
2 look. I don't -- I think Jim is one of the -- the ATL,

3 but I'd have to double-check. I'm not sure.

4 Q John Middleton, is he still in the  
5 plant?

6 A I don't know John.

7 Q You just don't --

8 A I'm drawing a blank on him.

9 Q Okay. There's a lot of employees  
10 there, Mr. Sennish, that's understandable. Jim Grimme?

11 A I know Jim.

12 Q Is he still in the plant?

13 A No, Jim is gone.

14 Q Is he one of the Ford salaried  
15 employees that left before the end of 2001?

16 A I believe so. It's Grimme I think.

17 Q I'm sorry?

18 A Grimme is his name.

19 Q Grimme?

20 A Yeah.

21 Q G-R-I-M-M-E?

22 A Yeah.

23 MR. SIMON: I've got some spellings  
24 here I can give the court reporter afterwards,  
25 but I can't verify their accuracy.

2 Q Rob Krutz?

3 A Rob Krutz is like Ed Zix and Mike  
4 Conners. He's an ATL resident.

5 Q George Barry?

6 A George Barry is an ATL resident.

7 Q And we talked about Ken Workman I  
8 guess. Is he the one who left at the end of 2001?

9 A Yeah. He, I believe, went to  
10 Sharonville.

11 Q Bernie Blankenship?

12 A Bernie -- Bernie left in that window.  
13 I'm not what -- where he went or he retired. I'm not  
14 sure.

15 Q All right. So other than Adam  
16 Vahratian -- is that his name?

17 A Vahratian, yes.

18 Q Other than him, to your knowledge, the  
19 only Ford salaried employees that are still in the  
20 building are these engineers?

21 A Right.

22 Q I'm still not clear. But for whatever  
23 reason they've got a separate arrangement than the  
24 other Ford transitional employees were given in 1999?

25 A They're not employees of the JV, never

1 were.

2                   Q           Do you know or has anyone told you why  
3                   they were apparently given a different option than the  
4                   other Ford transitional employees in '99?

5                   A           Because our customer wants their  
6                   employees to be in our plant as resident engineers.  
7                   Like I say, you'll go into the Sharonville plant and  
8                   you'll find resident engineers that are not on  
9                   Sharonville's rolls but are working every day in that  
10                  plant.

11                  Q           Ford apparently told ZF Batavia you can  
12                  keep the engineers, but they're going to be Ford  
13                  employees?

14                  A           Yeah. And Ford will decide that --  
15                  when they're leaving. And we -- they will just go.

16                               MR. HUNTER: Do you want to take a  
17                               break? It's been almost another hour and a  
18                               half.

19                               MR. SIMON: Sure.

20                               THE WITNESS: I'll be quick.

21                               MR. SIMON: Yes. Yes. Sure.

22                                       (RECESS)

23                               MR. SIMON: Mr. Sennish, we took  
24                               another brief break. You understand you're  
25                               still under oath, sir?



1 THE WITNESS: I understand.

2 Mr. SIMON: We're going to look through  
3 a series of documents, sir. When I show you a  
4 document, take as long as you need to review  
5 the document, to familiarize yourself with it.  
6 Some of the documents I'll be asking just  
7 questions about one particular line, other  
8 documents I might be asking you for comments on  
9 the entire document. I'll let you know.

10 But we'll try to work as efficiently as  
11 we can going through this. But at all times  
12 make sure that you look through the document  
13 carefully before you start testifying.

14 THE WITNESS: Understood.

15 BY MR. SIMON:

16 Q Continuing the series, this is Exhibit  
17 28. While you're looking at it, I'm just going to  
18 identify it. It says at the top Corporate Policy,  
19 there's a date of January 1st, 2001 at the very top,  
20 and under title it says Overtime (Exempt Employees).  
21 It says it's three pages, but there's actually four  
22 pages, which is an attachment.

23 I'm not going to ask you about every  
24 word here, Mr. Sennish, and I assume you've seen this  
25 document before, but take a look at it as long as you

1 need.

2 A No. Go ahead, please.

3 Q All right. The author is Len Sennish,  
4 which is you, right?

5 A Yes.

6 Q The date is November 15th, 2000 next to  
7 your title; do you see that?

8 A Yes.

9 Q I assume that's when this policy was  
10 issued.

11 A Thereabout.

12 Q And, I guess, when you were talking  
13 about the new policies that were created at the company  
14 after you joined, this would be an example of one?

15 A This would be an example.

16 Q And this is the overtime policy for  
17 exempt employees at the plant?

18 A Correct.

19 Q Let's turn to -- well, look at 5.3,  
20 which is part of the definitions. It's on the second  
21 page. 5.3 says overtime compensation (payable in  
22 hourly increments only). Do you see that?

23 A Yes.

24 Q Is that the policy regarding exempt  
25 salaried overtime, is that you pay in hourly increments

1           only?

2                   A           Yeah.  There's the factor of taking the  
3           -- the base salary and -- I think on the last page and  
4           where it's at and that it's fundamentally broken down  
5           into an hourly rate, which is consistent with what Ford  
6           does.

7                   Q           And when you created the policy in  
8           November of 2000, it was your intent at that time to  
9           make it consistent with Ford's overtime policy for  
10          exempt employees?

11                  A           It mirrored it, but it wasn't an exact  
12          duplicate of it.  We had, you know, our own pieces to  
13          it.

14                  Q           That attachment that you referenced on  
15          the final page, it explains that the "overtime rate" is  
16          for an exempt employee?

17                  A           Yes.

18                  Q           If you make more than approximately  
19          \$4300 a month, your flat rate is \$37.83 for Monday  
20          through Saturday, right?

21                  A           Yep.

22                  Q           And that rate goes up to \$50.44 for  
23          Sundays and holidays?

24                  A           Yep.

25                  Q           And you've adjusted this rate upward on

1 occasion in the last several years?

2 A Yeah. We -- we review it every --  
3 every year for inflation and whatnot.

4 Q Would you know the rates off the top of  
5 your head if I went through them?

6 A No.

7 Q Okay. I won't bother. Did it go up  
8 this year again?

9 A I believe we did adjust it.

10 Q Was it from 2001 to 2003? Did you skip  
11 a year in adjusting the overtime rate, do you recall?

12 A I -- I don't recall. I know you  
13 analyze it every year and I know we've made at least  
14 two adjustments in the last few years, but don't know  
15 -- can't recall whether we skipped a year.

16 Q Do you know if this overtime rate is  
17 consistent with Ford's overtime rate for their salaried  
18 exempt employees?

19 A No. But the -- the process --

20 Q The process is the same?

21 A -- is -- is fundamentally what most  
22 companies do, including Ford.

23 Q The figures that I had you read off on  
24 the attachment, \$37.83 for Monday through Saturday,  
25 \$50.44 on Sundays and holidays, do you recall if that

1 was the rate that Ford had given its salaried  
2 employees?

3 A I have no idea what Ford's rates are.

4 Q Do you know how that rate was  
5 determined, \$37.83 and \$50.44?

6 A Well, the algorithm yes, but, you know,  
7 in terms of was it based on what Ford's numbers were, I  
8 don't believe we used Ford in the -- the factoring of  
9 that.

10 Q Do you recall if the \$37.83 was a new  
11 rate in November 2000 or were you just confirming what  
12 the rate already was through 2000?

13 A I believe that was a confirmation. It  
14 may very well have been a carryover from Ford.

15 Q Okay. Looking under paragraph seven,  
16 policy, which is the second page -- and just for the  
17 record, Exhibit 28 is Bates stamped 000214 through  
18 000217. I think those are documents we produced to  
19 you.

20 I think I've got it on the record, but  
21 this, in fact, the current overtime policy for exempt  
22 employees at ZF Batavia, other than the perhaps  
23 difference in the current rate for the exempts?

24 A Yes, I believe that's the case.

25 Q All right. Paragraph 7.1 under policy,

1       it says that "Eligible ZF Batavia employees will  
2       receive overtime compensation for hours worked in  
3       excess of nine hours in a 24-hour time period Monday  
4       through Friday. Overtime compensation is not  
5       applicable if less than ten hours are worked daily  
6       except for Saturday, Sunday and holidays." I read that  
7       correctly?

8               A       Yes.

9               Q       We'll talk about casual time in a  
10       second. But let's say from the moment they walked in  
11       the door till the moment they left they were there nine  
12       and a half hours, all right?

13              A       Mm-hmm.

14              Q       So they were there one and a half hours  
15       beyond their eight-hour shift. Would they receive any  
16       overtime compensation?

17              A       Not automatically, no. It would have  
18       to be approved in advance, and a 30-minute increment  
19       wouldn't be approved in advance.

20              Q       I understand when we're talking about  
21       overtime, you would always want to say that it has to  
22       be approved, right?

23              A       Well, that's the procedure.

24              Q       Assuming it's approved that the person  
25       worked the extra hour and a half, the fact that it's

1 less than ten hours would mean that the person wouldn't  
2 receive any overtime compensation?

3 A Per this policy.

4 Q And is it your testimony that that's  
5 consistent with Ford's policy?

6 A No.

7 Q Is it consistent with Ford's policy?

8 A I'm not sure.

9 Q Ultimately I thought you said that when  
10 you created this policy, the process was basically  
11 consistent with Ford's policy or other companies that  
12 --

13 A No. No. I was talking about the  
14 attachment.

15 Q Just the attachment?

16 A That -- that piece, as we were  
17 referring to it, at that point is what Ford does. The  
18 numbers may be different, but that's what Ford --

19 Q So you don't know if at Ford if you  
20 worked nine hours, once you worked that extra hour, you  
21 got paid that hour? Are you aware of that?

22 A I -- I don't know for sure.

23 Q We've talked about there's an employee  
24 named Bernie Blankenship there at the plant.

25 A Was. Was, yes.

1 Q And he was never a ZF Batavia employee;  
2 he was always a Ford employee, right?

3 A Yes.

4 Q Was there a time where he put down that  
5 he worked nine hours on his time sheet and he was told  
6 "You're not getting paid for that hour" and he  
7 complained to Ford and he was paid?

8 A I recall that.

9 Q I described it accurately?

10 A I don't know what exactly he was paid,  
11 but I do know that he did get some relief from Ford  
12 relative to their policy compared to ours.

13 Q Do you recall if the issue was that he  
14 had worked nine hours? Do you remember if that was the  
15 specific issue?

16 A I'm pretty sure that was his issue.

17 Q Okay. And you, implementing the policy  
18 here on 7.1, as you've described it, he doesn't get  
19 paid that hour, right --

20 A All -- all --

21 Q -- if he's a ZF Batavia employee?

22 A Right. That's correct.

23 Q But apparently, based on your  
24 conversations with Ford or -- did you talk to Ford  
25 directly during that dispute with Bernie?



1           A           I did not personally. Other people in  
2           our organization did.

3           Q           But it was reported to you that a Ford  
4           employee, if they work nine hours, they get paid the  
5           full one-hour overtime?

6           A           My understanding is that they have it  
7           approved in advanced and that they do, I guess, from  
8           time to time pay people from the eighth hour.

9           Q           So based on what you know, your  
10          experience with Bernie Blankenship, you're the one who  
11          created this overtime policy, it's fair to say that  
12          this overtime policy that you issued November 15th,  
13          2000, was a departure from Ford's overtime policy that  
14          the Ford transitional employees had otherwise acted  
15          under as you understood it?

16          A           It certainly turned out to be  
17          different.

18          Q           And did anyone ever complain to you  
19          that they had to work this extra free hour for ZF  
20          Batavia that they hadn't had to work for Ford?

21          A           Oh, yeah, I've heard that complaint.

22          Q           The free hour, you've heard that a lot?

23          A           Well, yeah. Yeah, I've heard various  
24          terms.

25          Q           That kind of gets under your skin,

1 doesn't it?

2 A I'd said I don't fully comprehend why  
3 that's a problem.

4 Q You think if they're a salaried person,  
5 they're well compensated. If they work nine and a half  
6 hours, including an hour and half of casual time, you  
7 think that's a fair expectation that that's not paid?

8 A In my 20-plus years that's all I've  
9 ever known.

10 Q Has anyone in management at ZF Batavia  
11 told you that "Len, hey, that might be your attitude  
12 and perspective on this overtime policy, but this is  
13 wrong. We want our ZF Batavia employees to get paid  
14 the additional hour they work after the eight-hour  
15 shift"?

16 A Not that I recall, certainly in that  
17 tone. There are a lot of opinions expressed, but  
18 nobody came up with "I think it's wrong".

19 Q Well, I understand. Has there been any  
20 discussion since you issued this November 15th, 2000  
21 policy that we ought to -- have there ever been any  
22 discussions about possibly changing the policy  
23 regarding the nine hour and the ten hour rule?

24 A There's been discussion about the

25 issues surrounding it and our reaffirmation that that

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1 is our policy and that's what we're going to do.

2 Q Is it fair to say that you've had  
3 complaints from the people who are affected by this  
4 rule, but ultimately the people in upper management  
5 have decided this is our rule and we're sticking with  
6 it; is that a fair summary of it?

7 A Well, that's our rule and sticking with  
8 it is one characterization. It's the policy of the  
9 company and until it's otherwise modified, that's what  
10 it is and we all live by it.

11 Q We're done with this one. You can flip  
12 that over. You probably want to add that to your pile.  
13 We'll be going through a lot of documents here.

14 This is Exhibit 29. Take a look at  
15 that, Mr. Sennish. Really my question to you basically  
16 is just: Did you send out this document to the  
17 salaried employees?

18 A Yes. Mm-hmm.

19 Q Was this sent by e-mail I take it?

20 A That -- that is always the one forum  
21 that we use and then sometime -- like in a policy like  
22 this, it wouldn't be posted. Sometimes we mail, but  
23 there generally is a confidential e-mail sent to all  
24 salaried employees is one mode.

25 Q All right. Turn that one over. This

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1 is Exhibit 30. Take a look at it. I'll just describe  
2 it for the record. Exhibit 30 is Bates stamped 000206.  
3 It's an e-mail from Herb Huebner to Joe Phelps on  
4 February 19th, 2002, which is the same date of the memo  
5 we just looked at which was Exhibit 29.

6 My question to you is just: Does Mr.  
7 Huebner in his e-mail to Mr. Phelps -- does he fairly  
8 describe the reason that the change was made to the  
9 sick and personal days?

10 A Yeah. I think Herb expressed a bit of  
11 his opinion in here, but the facts, I believe, support  
12 it.

13 Q Is there some opinion he expressed  
14 there that you disagree with?

15 A No. No. I just said it wasn't --  
16 again, it was -- a lot of it is him giving the so-  
17 called rationale as he understood it for the changes.

18 Q But he stated the rationale accurately?

19 A I don't disagree with how he stated it.

20 Q Okay. Put that one aside. This is  
21 Exhibit 31. Exhibit 31 is a similar document in form  
22 to the overtime policy memo we looked at. This one  
23 says Corporate Policy at the top. The title here is

24 bereavement. The author here is Ann Appleton and Mr.  
25 Sennish's name is on it and the date is June 1st, 2000.

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1 Mr. Sennish, does this reflect the current policy at ZF  
2 Batavia regarding bereavement leave?

3 A I believe so.

4 Q And this policy apparently was issued  
5 to the personnel on June 1st, 2000 or thereabout?

6 A Yes.

7 Q Prior to this being issued, had it been  
8 the case that employees could get three days of  
9 bereavement leave for a death of a relative regardless  
10 of whether the relative is an immediate family member?

11 A Please, again.

12 Q Do you see on page two of this document  
13 procedure 7.1?

14 A Yes.

15 Q It explains you get up to three days  
16 leave for an immediate family member?

17 A Yes.

18 Q And then below it says "Employees may  
19 be granted one day absence with pay due to the death of  
20 other family members"?

21 A Yes.

22 Q Do you see that?

23 A Mm-hmm.

24 Q Did that reflect a change in policy at  
25 this point in 2000 or was this just confirming what had

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1 been the policy all along?

2 A This is, my recollection, a  
3 confirmation of what we were doing and I don't believe  
4 we -- we changed anything that -- in terms of what --  
5 what practice was in place.

6 Q Did anyone complain about this after it  
7 was issued?

8 A I -- I don't recall specifically, but I  
9 do believe that there -- again, you know, there was  
10 discussion about -- about this and some people  
11 evidently had some concerns with it. But, again, did  
12 something bubble into my office where there's a huge  
13 problem with this? I don't -- that didn't happen.

14 Q Do you remember if Hassan Saleh raised  
15 a concern about this policy?

16 A He may have, but I don't recall it.

17 Q Do you remember anyone having any  
18 concern that if their spouse's parents should die, that  
19 they would want more than a day for bereavement leave,  
20 and that person is out of town?

21 A I -- I could understand somebody  
22 raising that issue, but I don't recall hearing it.

23 Q There were some concerns, I guess, but  
24 ultimately the policy stayed in place as it's reflected  
25 here, right?

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1 A Yes.

2 MR. SIMON: Do you have Exhibit 10?  
3 Did we use Exhibit 10 yesterday? Do you have  
4 them over there?

5 MR. HUNTER: What do you need?

6 MR. SIMON: I've only got one copy.  
7 I'm just wondering if you have it.

8 BY MR. SIMON:

9 Q Go ahead and review Exhibit 10, Mr.  
10 Sennish. That was a document made an exhibit at an  
11 earlier deposition.

12 MR. HUNTER: Is that it?

13 MR. SIMON: Off the record for a  
14 second.

15 (OFF THE RECORD)

16 BY MR. SIMON:

17 Q You've had a chance to look at that?

18 A Yes.

19 Q Exhibit 10 is apparently a memo that  
20 you sent out on March 28th, 2002?

21 A Yes.

22 Q You sent it to all the exempt salaried

23 employees, right?

24 A Yes.

25 Q What was the impetus for sending out

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1 this memo?

2 A Well, it was our -- our lack of budget  
3 compliance and the state of the business, our  
4 continuing under-performance and basically the  
5 expectation of the parent companies that we improve,  
6 and this was one -- one piece of an overall plan to  
7 right the business.

8 Q And your concern here was too much  
9 overtime, right?

10 A Yeah, that the practice apparently when  
11 we wrote this letter was such that it wasn't very well  
12 controlled and it was inconsistent and no -- no real  
13 adherence to the budget.

14 Q Obviously here you reiterated what the  
15 overtime policy is that we previously discussed, that  
16 you have to work in excess of nine hours, essentially  
17 you have to work ten hours before you receive overtime  
18 compensation?

19 A That's the policy.

20 Q And you were concerned that wasn't  
21 being followed?



22 A That and many other things.

23 Q This is March 20th, 2002 on your memo.

24 Is it still your testimony that you don't recall in the  
25 same time period that certain departments were told

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1 that you are going to work overtime during the week and  
2 on weekends and not be paid?

3 A No. I -- that -- the -- it -- it would  
4 be like my department, if -- if I was scheduling -- and  
5 I have a lot of nonexempt employees in medical and  
6 security -- that I would be scheduling people and I  
7 would exceed my budget. The financial department would  
8 tell me what my circumstance had to be in order to  
9 comply with the budget. It was a dollars thing that  
10 was impacted by the policy and we wanted people to  
11 apply the policy. But, again, the -- the budgeting and  
12 compliance with the budget was not driven by HR. It  
13 was driven by finance. So I was under the same  
14 scrutiny as anybody else was by finance, the  
15 controller.

16 Q When you wrote at the bottom there, the  
17 second to last sentence, "The ZF Batavia executive team  
18 understands that many salaried employees will perceive  
19 this operating pattern as affecting a reduction in  
20 their total compensation package," what did you mean  
21 there?

22                   A           That at this stage of the JV it was  
23                   abundantly clear that a lot of people in the workforce,  
24                   salaried and hourly, were pretty much adverse to change  
25                   and that there -- again, the -- the conditions of the

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1                   business were such that the operating environment was  
2                   such we made the change and there was no question that  
3                   the -- the -- the workforce, the salaried exempt  
4                   workforce, would see this as "They're taking something  
5                   away from us." You know, I mean, that's their  
6                   perception and, you know, we expected that there would  
7                   be a number of people that would see it that way.

8                   Q           What would they specifically think was  
9                   being taken away from them?

10                  A           I don't know. I just said it would --  
11                  that the perception out there is that there is  
12                  something going on, that we're going to get less  
13                  overtime, you know. When you spend less money on  
14                  overtime, there's going to be an impact on people's  
15                  paychecks.

16                  Q           Did you think people were concerned  
17                  that they weren't going to have the opportunities to  
18                  work more overtime and be compensated or did you  
19                  perceive their concern that people are going to work  
20                  overtime and not be paid for it?

21                   A           That they were going to work less  
22                   overtime. There's a reference to the -- the level of  
23                   overtime being worked in the hourly workforce which is  
24                   driving a lot of the salaried overtime and so part of  
25                   this just being a piece of our overall initiatives that

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1                   we were going to reduce the amount of hourly overtime,  
2                   which we have done, which would commensurately reduce  
3                   the salaried overtime.

4                   Q           You didn't understand that this nine  
5                   hour rule that you set forth in here would be  
6                   interpreted as reducing people's compensation?

7                   A           Well, that rule was about two years old  
8                   by then.

9                   Q           Although apparently inconsistently  
10                  applied?

11                  A           Inconsistently applied? Maybe applied  
12                  too liberally.

13                  Q           Okay. We're done with that one. Thank  
14                  you.

15                               MR. HUNTER: Does that need to go back  
16                               in the stack?

17                               MR. SIMON: No. I'll take it. I'll  
18                               take it.

19                  BY MR. SIMON:

20                  Q           This is Exhibit 32. I'm going to hand

21 you some more exhibits at once, Mr. Sennish, so we can  
22 do this efficiently. Exhibit 34.

23 Mr. Sennish, I've handed you a group of  
24 documents that are Exhibit 32, 33, 34 and 35.  
25 Basically my point is just to try to understand a

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1 little bit about the AIP bonus and how it's calculated.  
2 We'll take them individually actually. I know you've  
3 got a lot of paper in front of you, but that's just to  
4 be efficient about this.

5 Exhibit 32, which is this document,  
6 says at the top ZF Batavia Salary Broad Bands 2000. It  
7 also has a date of 2/9/01 at the bottom. What does  
8 this document reflect?

9 A This is the salaried range for that  
10 period of time and represents each of our -- our broad  
11 bands in -- in ZF Batavia and identifies the -- the  
12 Ford transition ranges in our structure with the ZF  
13 Batavia new hire. And that gets reviewed every --  
14 every year and updated as necessary.

15 Q When you were talking earlier that the  
16 Ford transition employees, that their maximum on their  
17 -- for each band is higher than the corresponding ones  
18 for ZF Batavia, does this document reflect that?

19 A Yes, it does.

20 Q Okay. Exhibit 33 is the document Bates  
21 stamped 003445. It's a Herb Huebner e-mail dated  
22 September 8, 2001. Actually it's from you to Mr.  
23 Huebner. Below your e-mail is an e-mail from Mr.  
24 Huebner from to you on September 5th, 2001 and it talks  
25 about an employee named Jeff Busam.

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1 A Yes.

2 Q Does this e-mail reflect your  
3 recollection about -- was there some certain issue with  
4 Mr. Busam?

5 A I recall this generally.

6 Q What was this about?

7 A Well, there was, I believe, Mr. Busam  
8 was considered for a lean processing manager position  
9 and at the time he was a general salaried role  
10 employee, or GSR as you would see it on that previous  
11 sheet, and the LPM position was an MR position as  
12 reflected on that previous sheet, and MRs generally --  
13 generally are not compensated for overtime anywhere  
14 near the extent that the GSR in operations is.

15 So Mr. Busam apparently worked almost  
16 as much overtime as he did straight time as a GSR and  
17 when considering the -- the LPM position, and evidently  
18 in his case money was the motivating factor, I think he  
19 kind of nixed it. "I can make more money getting paid

20 for overtime."

21 Q Mr. Huebner has a little chart there  
22 with different names like Dennis Baker and then it has  
23 average monthly year to date plus overtime, year to  
24 date overtime as a percentage of base. Do you see  
25 that?

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1 A Yes.

2 Q Does that in your mind reflect pretty  
3 high percentages for overtime as a percentage of base  
4 for those individuals?

5 A Yeah. I mean, the 92 percent would  
6 shock any reasonable person. But I think the 20 to 30  
7 percent range for the Batavia plant is -- is a -- a  
8 norm.

9 Q As we were talking about the AIP bonus  
10 before, if somebody had worked -- the percentage of  
11 their total compensation for overtime was, as you said,  
12 say, 30 percent, is that somebody who you would have  
13 expected to have their AIP bonus reduced, assuming they  
14 weren't a top performer?

15 A No, I don't think it was that simple.

16 Q Is there a percentage you might say  
17 that would indicate too much overtime for a person such  
18 that their AIP bonus would have been reduced in 2002?

19                   A           No. I think it was clearly the  
20                   relationship between their performance and the amount  
21                   of time they were putting in and getting paid and  
22                   factoring all those -- those components into what you  
23                   felt was an appropriate award.

24                   Q           But overtime was one of the factors.  
25                   If there's too much overtime, that was a factor in

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1                   determining the AIP bonus?

2                   A           Yeah. It would -- it was a -- a -- a  
3                   driver in terms of looking at those individuals, say,  
4                   if there's a 92 percent person in your category, that  
5                   would have jumped right out and that would have been  
6                   one of the first ones you looked at and say "Okay.  
7                   Well, where's his performance equate with that? He's  
8                   spending all these hours in here. What am I getting  
9                   out of it?"

10                   Q           I'm just trying to understand. What  
11                   kind of percentage would jump out at you?

12                   A           To -- to me any -- anything over  
13                   basically 25 percent.

14                   Q           So Mr. Ervin who has 27 percent and Mr.  
15                   Baker who has 42 percent, depending on their  
16                   performance, you may have expected their AIP bonus to  
17                   be reduced for 2002, right?

18                   A           In my opinion, that's how I would have

19 looked at it.

20 Q Fair enough. You can turn that exhibit  
21 over. We'll look at Exhibit 34, which is an e-mail  
22 from Mr. Huebner to you, Mr. Sennish, on January 22nd,  
23 2002. Does Mr. Huebner's e-mail kind of reflect these  
24 same things we're talking about regarding overtime and  
25 AIP? I'll just direct you to his subparagraph B in the

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1 middle of the page "Taking "excessive" overtime into  
2 account. Did the manager fail to manage? Did the  
3 employee who worked a lot of overtime fail to manage  
4 his work or was he being a good guy and taking more  
5 overtime than other people?" Are these the kind of  
6 considerations that Mr. Huebner has there -- is that  
7 what kind of went into the discussion of how to award  
8 the AIP bonus for 2002?

9 A Yeah, and it was kind of -- wasn't my  
10 comment, it wasn't that simple? There were several  
11 factors that were to be considered.

12 Q So if you worked a lot of overtime, you  
13 weren't necessarily supposed to automatically have your  
14 AIP bonus reduced?

15 A That's correct.

16 Q Okay. You can turn that one over.  
17 This next one is Exhibit 35, Bates stamped 003251 to



18 003252. It's an e-mail from Mr. Huebner on February  
19 8th to you, Mr. Sennish, as well as some other people.  
20 And then when this was produced, there was what I  
21 assume to be the attachment from Mr. Huebner, a memo,  
22 on the second page. It says AIP process review at the  
23 top.

24 Just try to help me out here, Mr.  
25 Sennish. Does this e-mail and some of the notes we

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1 have and the memo that's attached -- does this kind of  
2 reflect some conversations that you and Mr. Huebner and  
3 Mr. Kehr and perhaps Mr. Adams were having about the  
4 AIP bonus for that year?

5 A Yes, it does.

6 Q All right. See on the second page  
7 where we have the memo with all the bullet points, in  
8 the middle it says "Bonus reduction departments were  
9 determined by those groups with unusually heavy amounts  
10 of overtime (more than 75 percent over budget)"? Do  
11 you see that there?

12 A Yes.

13 Q Was that how it was ultimately  
14 determined? Does his statement reflect the kind of  
15 determination that was made regarding the AIP bonus  
16 with respect to overtime in those departments?

17 A I -- did I know that was a -- a

18 discussion point? I'd have to defer to me looking at  
19 the records whether or not that bullet was actually  
20 implemented.

21 Q I guess there was some discussion in  
22 the middle there where it says "Group one bonus is  
23 reduced by 25 percent. Group two bonus is reduced by  
24 15 percent." Do you know if that was implemented?

25 A I'd have to go back and look. I just

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1 -- there was so much discussion about that. I --

2 Q Was there a directive from Mr. Adams  
3 that he did want the operational people to receive less  
4 of a bonus because of the excessive overtime?

5 A Where warranted.

6 Q Did he want the operational people to  
7 feel some pain? Have you ever heard that phrase?

8 A Well, I've heard it probably 10,000  
9 times, but it may very well have been said during this  
10 process.

11 Q Okay. You can turn that one over.  
12 This is Exhibit 36, Mr. Sennish. Take as long as you  
13 need to look. My question is: Is this a memo that you  
14 sent out to the TNTs on March 8th, 2002?

15 A That it is.

16 Q Who are the TNTs?

17                   A           Those are the individuals that report  
18                   directly to the president. It's the transmission  
19                   management team.

20                   Q           And does this memo fairly reflect the  
21                   company's explanation for the AIP payout for 2001?

22                   A           Yes.

23                   Q           When I say 2001, that was 2001 bonus  
24                   that was handed out in 2002, right?

25                   A           Right.

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1                   Q           Turn that one over. This is Exhibit  
2                   37. We're not going to go through every page. Pardon  
3                   me. I think I gave you too much. This is Exhibit 37.  
4                   Again, you don't have to look at every page of this,  
5                   Mr. Sennish.

6                               This is Bates stamped number 003356  
7                   through 003394. It says Confidential ZF Batavia 2001  
8                   AIP Determination 3/5/02. Do these documents reflect  
9                   what the final payout was for AIP for 2001 for the  
10                  various individuals listed in here?

11                               MR. HUNTER: Go through the whole  
12                  thing.

13                               MR. SIMON: I'll represent to you, sir,  
14                  when you turn the page, it says 3/5/02 on the  
15                  second page and then 3/4/02. The dates kind of  
16                  change.

17 THE WITNESS: Yeah, when all the  
18 information was received and finalized I  
19 presume.

20 BY MR. SIMON:

21 Q I'm just trying to understand. Is this  
22 a document that would ultimately reflect the final  
23 decision on the AIP bonuses?

24 A Yeah, it would be in this format. So  
25 far it appears to be consistent.

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1 Q Turning to, let's say, the second page  
2 where it says office of the president --

3 A Yes.

4 Q -- it says Cynthia Clousson is the  
5 first name listed there. It has Cynthia's base pay and  
6 then it has her AIP percent payout, right?

7 A (Nods head)

8 Q Based on this chart, would it reflect  
9 that her AIP bonus was \$835?

10 A Yes.

11 Q So the column that says available for  
12 payout 2001, as you flip through the pages here, it's  
13 your understanding that those reflect the actual AIP  
14 bonuses that these individuals received?

15 A No. The last column, I believe, is

16           reflective of what was actually --

17                   Q           Actual. I'm sorry. Right. The very  
18           last column. Staying with Ms. Clousson for a second,  
19           why would her available for payout be \$835 and her  
20           actual be zero? Would that be based on performance?

21                   A           Yes.

22                   Q           I see like Carmen Pinheiro, the second  
23           name there, that the actual payout is slightly higher  
24           than the available payout column.

25                   A           Yes.

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1                   Q           Do you know why that would be the case?

2                   A           It was a decision to reward her for her  
3           exemplary performance.

4                   Q           Would the same thing be true for Mr.  
5           Feldkamp?

6                   A           Yes. And there's a footnote on Mr.  
7           Feldkamp for a specific project that he worked on that  
8           had exceptional success.

9                   Q           Would the HR department create a  
10           similar report and retain that document for each of the  
11           years that an AIP bonus was distributed since 1999?

12                   A           For 1999, beginning in 2000, yes.

13                               MR. SIMON: Well, we may be asking for  
14           that document, Mr. Hunter, so we can understand  
15           how this AIP bonus was calculated. We're going

16 to need to know all the numbers.

17 Okay. You can turn over that bulky  
18 document, sir. Off the record.

19 (OFF THE RECORD)

20 BY MR. SIMON:

21 Q There you go, Mr. Sennish. Exhibit 38  
22 is a multi-page affair. My question to you is -- and  
23 take as long as you need to, to familiarize yourself  
24 with it. This was a document that was produced by ZF  
25 Batavia in this case. I'm just wondering, do you have

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1 any idea where this document came from, whether you've  
2 seen it before?

3 A Well, I would guess that Mr. Huebner  
4 probably printed this out since he's a SHRM member.  
5 I've read so much stuff in this respect, I probably  
6 read this or at least gleaned it.

7 MR. SIMON: That's it. Off the record  
8 for a second.

9 (OFF THE RECORD)

10 BY MR. SIMON:

11 Q This is Exhibit 39. I don't have the  
12 whole thing here. I don't have the whole thing.  
13 Actually strike that. We're not going to mark Exhibit  
14 39, but you can go ahead and review the document

15           anyhow.

16                           MR. HUNTER: We are or we aren't using  
17                   this?

18                           THE WITNESS: We're going to use it,  
19                   but not call it Exhibit 39.

20       BY MR. SIMON:

21                   Q           My question to you as you look at this,  
22       Mr. Sennish, is: Were you aware of this inquiry into  
23       whether Rick Ervin could retire from Ford and continue  
24       to work for ZF Batavia?

25                   A           Yeah. He came to me and talked about

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1       it.

2                   Q           And did you initially tell him that you  
3       thought that he could do that?

4                   A           I told him that I felt there was a  
5       possibility and that I would follow it up and see what  
6       the position of Ford was.

7                   Q           And apparently the position of Ford was  
8       that he couldn't retire from Ford if he was going to --

9                   A           Immediately assume the same desk.

10                  Q           Yes. Now, we've talked about some of  
11       these other Ford employees who you said retired in 1999  
12       before they joined the joint venture, right?

13                  A           Mm-hmm.

14                  Q           Has anyone ever told you why Ford in

15 consultation with ZF Batavia wouldn't allow a current  
16 ZF Batavia employee to do the same thing that the Ford  
17 employees had done in 1999, specifically allow them to  
18 retire and then continue to work with ZF Batavia?

19 A Other than a document like this, no.  
20 This just wasn't the -- the transition from Ford to the  
21 JV was such that there were time lines and  
22 opportunities and the window was closed and this one  
23 was a unique circumstance. It was outside the  
24 arrangements that were made at the inception.

25 Q And there haven't been any further

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1 discussions between ZF Batavia and Ford about this  
2 issue?

3 A No. I think this, as I recall, was the  
4 closure.

5 Q Okay. We'll call this one Exhibit 39.  
6 This is a document that says Transition Plan at the  
7 top. It's dated 5/5, 2000. It says Ford Salaried  
8 Employees at ZF Batavia. Did you create this document,  
9 Mr. Sennish, do you know?

10 A Yeah, or at least participated in it.

11 Q Is that a true statement where it says  
12 "At the onset, an agreement was made to transition out  
13 the Ford salaried workforce over a period of two to



14 three years, with year-end 2002 as the target date for  
15 completion"?

16 A That's pretty much the line that we --  
17 the actual outcome, yes.

18 Q And where it says Placement Status, I  
19 take it you or the HR department was keeping track of  
20 which Ford salaried employees were still in the plant  
21 at that time?

22 A Yes, we were.

23 Q Okay. You can turn that one over.  
24 This is Exhibit 40. This is a series of e-mails  
25 beginning with Karen Horan to Marty Mulloy sent on July

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1 31st, 2000 and there's another e-mail below it.

2 Mr. Sennish, I'm not sure your name is  
3 on it, but I was wondering if you could help explain.  
4 In the middle of the e-mail it says "We obviously have  
5 a less than desirable situation in Batavia -- let's  
6 come up with a plan that appropriately address their  
7 concerns." That's said in an e-mail on July 31st,  
8 2000. The subject is Ford salaried employees.

9 Have you ever seen this e-mail before  
10 or does it refresh your recollection about what Marty  
11 Mulloy may have been talking about?

12 A Well, I have never seen this part of  
13 the e-mail, but I have seen Ms. Malone's summary of the

14 meeting. And Mr. Mulloy, I believe, ultimately came to  
15 Batavia and had -- had Ford-employee-only meetings with  
16 the remaining Ford salaried people in the building, as  
17 well as some that had transitioned.

18 Q Do you know what this is referring to,  
19 a less than desirable situation?

20 A That there were some issues that the  
21 employees had with Ford Motor Company.

22 Q And you're not aware what those  
23 concerns were?

24 A That was a closed meeting, and Ms.  
25 Malone sat in because she was a Ford employee at the

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1 time and all ZF employees were excluded from it. It  
2 was an internal Ford meeting.

3 Q You can turn that one over, sir. This  
4 is Exhibit 41. This is a handwritten note that says  
5 Ford/ZF Salaried at the top. It's dated 9/28/00. It  
6 lists some people who were in attendance at perhaps a  
7 meeting and your, Mr. Sennish's, name is one of them.  
8 Is this your note, Mr. Sennish?

9 A No, this is not my note.

10 Q Do you recognize that handwriting?

11 A No.

12 Q There's a line at the end that says "ZF

13 will honor commitment made to people who want to stay  
14 until 12/31/02." Do you know what that's referring to?

15 A Well, originally it was not 12/31/02.  
16 I believe it was 12/31/01 was the original commitment  
17 of the window to either make a decision or leave. And  
18 whether it was an internal Ford thing or a board thing,  
19 that ultimately extended that window another year. But  
20 I think this is a confirmation that somewhere a  
21 commitment was made and we're going to live up to it.

22 Q Okay. You can turn that one over.  
23 This is Exhibit 42. This is an e-mail from Carolyn  
24 Malone to Marty Mulloy, among others, dated August  
25 21st, 2000. This exhibit also -- it's a three-page

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1 exhibit, Ford Bates stamp 0542 through 0544.

2 Were you aware -- there are some  
3 concerns raised in Ms. Malone's e-mail? Were you aware  
4 of these concerns?

5 A Yeah.

6 Q Fill us in. What was this about?

7 A Well, apparently during the Ford-  
8 employee-only meeting that was chaired by Mr. Mulloy,  
9 he evidently threw out the concept of, you know, the  
10 special package or some kind of buyout, as referenced  
11 in here, which was outside of any other discussions  
12 with transition employees and he -- he just like added

13 to the pile of "Well, if we do this, will it help  
14 whatever is -- concerns you?"

15 And so, as it turned out, there -- the  
16 -- you know, the initial population of Ford employees,  
17 a lot of them were mobile and as you got down over time  
18 there were people that were less mobile, that didn't  
19 want to leave Cincinnati and basically felt that if  
20 they -- the longer they hung around, the better  
21 prospect there might be for some change that would  
22 allow them to stay a Ford employee in Batavia.

23 So all those things considered, there  
24 were a lot of individual issues and people felt --  
25 there were some people that simply weren't happy with

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1 the creation of the JV and the resultant effect on  
2 them.

3 Q Do you see at the bottom where she  
4 writes "This does not lend much credence to confidence  
5 in 'DOING THE RIGHT THING'"? Do you know what she's  
6 referring to there?

7 A No. And, I mean, looking up at the top  
8 paragraph with the word "punitive word being 'if,'" you  
9 know, I -- sometimes the choice of words is more of a  
10 -- you know, a -- just a -- a phrase as opposed to  
11 something having real direct meaning.

12 I -- I don't -- I wasn't in the  
13 meeting. She sat in the meeting. She was a Ford  
14 employee. I see these bullets and I've got to believe  
15 that people that have specific personal issues,  
16 apparently in her mind we ought to try to do the right  
17 thing. I don't know.

18 Q Okay. I appreciate that. You can turn  
19 that one over. Was it your understanding in 1999 that  
20 at some point there was a freeze on Ford employees  
21 going over to the Sharonville plant?

22 A There -- there was a -- I don't know  
23 whether it was '99 or 2000 and it just wasn't  
24 Sharonville. Sharonville took a position that they  
25 weren't going to wholesale take people from Batavia

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1 that they didn't need, i.e. they didn't have any  
2 openings, when other Ford facilities throughout the  
3 United States may have had openings, and, in other  
4 words, don't -- don't give us all these people because  
5 we don't need them.

6 Q This is Exhibit 43. This is an e-mail  
7 from you, Mr. Sennish, to a gentleman at Ford, dated  
8 December 15th, 2000. The Bates stamp, it's Ford's  
9 document 0625. After you've had a moment to review  
10 that, Mr. Sennish, if you could just explain if, in  
11 fact, you wrote this e-mail.

12 A Yeah, I -- this is my e-mail.

13 Q The question is just going to be to  
14 you: What was the impetus for sending this e-mail to  
15 Ford?

16 A Well, one of my contacts at Ford was  
17 Mr. Kleinsmith and -- I haven't finished reading it.  
18 This has been a little while. Yeah, I think that we --  
19 we had an understanding of how this transition process  
20 was supposed to work and we were the organization, you  
21 know, holding the bag. And when things -- selections  
22 were made or transfers were made that weren't purely  
23 consistent with what we felt was supposed to happen,  
24 that it caused issues with people.

25 And as you can see in my -- my summary

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1 here, we had people, based on one of the earlier  
2 attachments, when they were available to Ford in terms  
3 of us having continuity in our business, and so some of  
4 these selections were inconsistent with that. And, you  
5 know, a couple of people had indicated -- well, like  
6 Mr. Kelly, "I'm going to retire, so I'll just stay here  
7 and retire" and somebody must have told him that's okay  
8 from Ford, because they were the moving party in all  
9 these.

10 And so I think what I was communicating

11 to Mr. Kleinsmith, you know, help us a little bit here  
12 and let's -- let's have more advance notice and let's  
13 make sure we're being consistent with the commitments  
14 that were made to the employees.

15 Q Who's SHV? I'm sorry.

16 A Sharonville. An abbreviation.

17 Q Has that kind of continued to be an  
18 issue in the plant, that certain people were  
19 essentially allowed to go to Sharonville and stay with  
20 Ford and others haven't been given that opportunity?

21 A That's been an issue because it hasn't  
22 happened.

23 Q Because no one else has gone to  
24 Sharonville?

25 A Well, people have gone to Sharonville,

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1 but on a scheduled basis, based upon Sharonville's  
2 openings. And the predominate sentiment of a lot of  
3 people was "I want to stay in Cincinnati. Why can't I  
4 go to Sharonville?" And I think there's a -- a  
5 reference to handpicking. And Sharonville picked the  
6 people that they felt best filled their openings, so  
7 other people that weren't picked were not quite as  
8 happy.

9 Q You wanted to put an end to the  
10 handpicking? You wanted it to be a better process of

11 how people were eligible to leave Batavia and go to  
12 Sharonville?

13 A Yeah. I didn't want to tell  
14 Sharonville how to select their people, but ultimately  
15 when they have an opening, there was a preference to ZF  
16 Batavia employees who met the requirements of the job  
17 before they would go and hire somebody else or take in  
18 another transfer, that these were the preferential  
19 places.

20 Q When you wrote "I don't want to make a  
21 mountain out of a mole hill, but here we go again,"  
22 what did you mean by here we go again?

23 A That circumstances similar to this  
24 obviously happened in the recent past.

25 Q Circumstances regarding handpicking by

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1 Sharonville?

2 A Could be. Or it could be any of these  
3 other things like not picking somebody and wanting them  
4 ahead of their availability. It was a mixed bag.

5 Q Okay. Turn that one over. I want to  
6 talk about the 401(k) for a second. Was there a  
7 matching contribution by the company?

8 A ZF Batavia, yes.

9 Q And the contribution is a reflection of



10 the person's total compensation?

11 A Their base salary. Six percent of the  
12 base salary is eligible and there's a 50 cent on the  
13 dollar match up to that amount.

14 Q Does overtime factor in?

15 A No.

16 Q Does AIP bonus?

17 A No.

18 Q Do you know if AIP bonus or overtime  
19 compensation affects the Ford pension plan for the Ford  
20 transitional employees participating?

21 A I believe the last five years' earnings  
22 may -- may be influenced by that, but I'd have to  
23 reread the Ford GRP.

24 MR. SIMON: Let's go off the record for  
25 a second.

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1 (OFF THE RECORD)

2 Q The benefit plans that the Ford  
3 transitionals have include, let's see, 401(k) plan,  
4 right?

5 A Yes.

6 Q What other benefit plans do you have  
7 for the Ford transitionals?

8 A You mean -- you know, hospital,  
9 surgical, medical, dental, vision?

10 Q Okay. Let me write those down.

11 There's a health benefit plan?

12 A Yes.

13 Q Is there a separate plan for dental?

14 A Yes.

15 Q And there's a life?

16 A Yes, life insurance, dependent group  
17 life insurance. And some of these have co-pays and  
18 deductibles and whatnot, but, you know, they're pretty  
19 much the standard, as in Exhibit 2, if that's what it  
20 was. You know, it pretty much identifies in a nutshell  
21 what the benefit plans were.

22 Q Well, now, the benefit plans, these are  
23 ones that are subject to ERISA, right?

24 A By and large, yeah.

25 Q ERISA, it's the federal employee

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1 retirement act. You're familiar with it, being an HR  
2 director, right?

3 A Mm-hmm.

4 Q That was a yes?

5 A Yes. I'm sorry.

6 Q Okay. And so subject to ERISA, these  
7 benefit plans have to have a summary plan description,  
8 right?

9 A That's correct.

10 Q So the 401(k) plan would have a summary  
11 plan description?

12 A It should.

13 Q The health benefit plan the same?

14 A Same.

15 Q The dental plan should have a summary  
16 plan description?

17 A Yes.

18 Q I don't know, the life insurance plan,  
19 is there one?

20 A There should be. I -- I don't -- I'm  
21 not sure.

22 Q Are there any other benefit plans that  
23 have a summary plan description that you're aware of?

24 A No. I think that would be it.

25 Q I mean, you don't have a summary plan

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1 description plan for overtime, do you?

2 A No.

3 Q You don't have one for the AIP, do you?

4 A No.

5 Q You don't have a summary plan  
6 description for merit increases, do you?

7 A No, we don't.

8 Q Just because you may be familiar with

9 ERISA, just as an HR director, with these benefit plans  
10 like the 401(k), do they typically have some language  
11 in their summary plan descriptions where they have some  
12 sort of reservation of rights clause? Are you familiar  
13 with that?

14 A Yes.

15 Q Meaning that it says in the 401(k)  
16 "This is the plan, these are the terms, but we reserve  
17 the right to change them as we see fit," right?

18 A That is typical.

19 Q You mentioned Exhibit 2 and you were  
20 nice enough to keep that one on top. Exhibit 2 is the  
21 summary that was given to the Ford transitional  
22 employees. Do you see in the far right-hand column,  
23 the lower right, where it says "This brochure includes  
24 only the key features of the ZF Batavia benefits  
25 plans"?

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1 A Yes.

2 Q When it's referring to benefits plans  
3 there, as you understand the document, it's referring  
4 to the 401(k) plan, the health benefit plan, the dental  
5 plan, et cetera?

6 A I would consider those our plans.

7 Q It's referring to those plans that have

8 a summary plan description, right?

9 A Well, I don't know if that was the  
10 intended use of the word plans by the -- the author of  
11 this, but I think it says the brochure in its totality  
12 includes key features and if they considered everything  
13 in here a plan, I guess that's what they meant.

14 Q Well, this is a document you've seen.  
15 When you saw it referring to plans, did you understand  
16 it to be referring to these plans that have summary  
17 plan descriptions? Is that how you understood the word  
18 plans?

19 A No. I -- I took it as everything that  
20 was in the document.

21 Q I asked you about the reservations of  
22 rights clause. This language in that far right column,  
23 does this look like your typical reservation of rights  
24 column you might find in a summary plan description?

25 A I think that it's pretty darn close to

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1 the standard clauses.

2 Q I mean, you've had opportunity to see  
3 these reservation of rights clauses because, as an HR  
4 director, you've had to review summary plan  
5 descriptions routinely, right?

6 A Yes, I have done that.

7 Q And part of your training -- I'm sure

8           you've had ERISA training over the years, right?

9                   A           Yes.

10                  Q           And through that training you've  
11           learned about these reservations of rights clauses and  
12           you've reviewed them many times?

13                  A           Absolutely.

14                  Q           Do you think that the -- staying on  
15           Exhibit 2, where it has salary, annual incentive plan,  
16           merit increase program, do you think those refer to the  
17           pay policies of ZF Batavia?

18                  A           Yes.

19                  Q           I guess as opposed to -- the 401(k)  
20           savings plan, that's referring to a benefit that ZF  
21           Batavia affords its salaried workforce, right?

22                  A           Well, it, yeah, is a -- it is our --  
23           our equivalent of a retirement program for ZF Batavia  
24           new hires and -- and it's a -- and it's also a -- a  
25           benefit of sorts, policy, plan to people that

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1           transition into Batavia.

2                  Q           I think we're done with that document.  
3           I wanted to go back to another subject of inquiry just  
4           to get something right. We had talked about a comment  
5           attributed to you, that you like to stir the pot, and I  
6           think you said that that didn't sound like you. Have

7       you ever said to people, I'm here to stir the pot or  
8       piss people off?

9               A       No. I just -- I -- it -- it just -- it  
10       doesn't even fit, that I would -- I come in as an HR  
11       director and I'm telling people I'm here to piss people  
12       off.

13              Q       I mean, that wouldn't be appropriate  
14       obviously?

15              A       And I didn't do it.

16              Q       And you agree with me?

17              A       Agree with you on what?

18              Q       It wouldn't be appropriate for an HR  
19       director to come in and tell people "I'm here to piss  
20       people off"?

21              A       No, that would not be appropriate.

22              Q       Have you ever used maybe that kind of  
23       language when you were dealing with the union?

24              A       No. And if -- if somebody extrapolated  
25       that out of a statement that I made, that's the best

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1       credence I could give it.

2                      MR. SIMON: Let's take a brief break.

3                               (RECESS)

4       BY MR. SIMON:

5              Q       Mr. Sennish, we were talking about the  
6       AIP bonus and we were talking about someone who worked

7 too much overtime, that their bonus might be reduced if  
8 they were a poor performer, but if they were a good  
9 performer, the overtime wouldn't be an issue for their  
10 AIP bonus. Does that fairly describe the overtime  
11 issue for the AIP 2001 bonus?

12 A I believe that was fundamentally the  
13 guideline.

14 Q Now, when we're talking about  
15 performance, who's reviewing the performance, the  
16 person's supervisor?

17 A Yeah. The manager, supervisor,  
18 whatever you want to call it.

19 Q Is it the supervisor or manager's  
20 performance review that would dictate then whether this  
21 person was a good performer to get an AIP bonus or was  
22 conversely a bad performer and wouldn't get the AIP  
23 bonus? I mean, ultimately was it the supervisor's  
24 review that would dictate that?

25 A Yes.

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1 Q Was there any review up above in HR  
2 that would supercede what the supervisor's review was?

3 A No. If we got a review back that we  
4 had questions on, we would bring that respective  
5 manager up and ask them, you know, "Here's what an



6 observation is. Why did you do this?" and have them  
7 justify it.

8 Q And if they justified it, then the  
9 review would stay the same and that's the review that  
10 would be given to the employee, right?

11 A Yeah. I -- I don't recall where we  
12 would ever override somebody's assessment of one of  
13 their employees.

14 Q So if a person was told in 2002 that  
15 you're not getting a 2001 bonus because you worked too  
16 much overtime and your performance isn't up to par and,  
17 in fact, that person had what he considered to be a  
18 good performance review by the supervisor, that  
19 wouldn't make any sense, would it?

20 A It would be difficult to explain.

21 Q And if the supervisor told that person  
22 "Well, I'm not talking about my performance review.  
23 I'm talking about 50,000 feet up reviewed your  
24 performance and determined it was bad," I mean, would  
25 that be appropriate at all? Would that be a fair

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1 reflection of what happens?

2 A I think it would be totally  
3 inappropriate and a totally unfair representation  
4 because nobody up there, whatever that means -- I  
5 presume I know what it means -- would look at an

6 individual performance review and say "I'm changing  
7 that."

8 And, again, we have discussions with  
9 people about questionable circumstances, but we don't  
10 just arbitrarily, unilaterally overrule.

11 MR. SIMON: I have no more questions.  
12 We're done.

- 0 -

(AND FURTHER THE DEPONENT SAITH NAUGHT)

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Leonard Sennish

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C-E-R-T-I-F-I-C-A-T-I-O-N

STATE OF OHIO,

COUNTY OF WARREN, To-wit;

I, Melea E. Chaney, Court Reporter and  
Notary Public in and for the State of Ohio, do hereby  
certify;

That on the 25th day of July, 2003,  
there appeared before me pursuant to Notice and  
agreement of counsel, LEONARD SENNISH, as a witness in  
the previously entitled cause;

That the said witness was sworn by me  
and examined to tell the truth, the whole truth, and  
nothing but the truth in said cause;

That the deposition was taken by me via  
Stenomask and electronic recording and the foregoing  
173 pages contain a true, full and correct

transcription of all the testimony of said witness;

That the deposition was submitted to  
counsel for the witness for reading and signature;

That I am not related to or in any way  
associated with any of the parties to said cause of  
action, or their counsel, and that I am not interested  
in the event thereof.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 13th day of August, 2003.

---

Melea E. Chaney  
My commission expires:  
July 3, 2006